

## **TITLE 327 WATER POLLUTION CONTROL BOARD**

### **SECOND NOTICE OF COMMENT PERIOD**

#99-58(WPCB)

### **DEVELOPMENT OF AMENDMENTS TO RULES TO ESTABLISH WETLAND WATER QUALITY STANDARDS AND NEW RULES TO ESTABLISH PROCEDURES AND CRITERIA FOR REVIEW OF PROJECTS REQUIRING WATER QUALITY CERTIFICATION UNDER SECTION 401 OF THE CLEAN WATER ACT**

#### **PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language to amend rules concerning water quality standards by incorporating wetland water quality standards and for a new article to establish procedures and criteria for reviewing federally permitted or licensed activities that require a water quality certification under Section 401 of the federal Clean Water Act. These activities include those regulated by the U.S. Corps of Engineers under Section 404 of the Clean Water Act and by the Federal Energy Regulatory Commission, such as licenses for hydroelectric facilities. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

#### **HISTORY**

First Notice of Comment Period: #94-5(WPCB) Indiana Register, September 1, 1994, (17 IR 3013), #97-3 (WPCB) Indiana Register, April 1, 1997, (20 IR 1960), and #99-58(WPCB), Indiana Register, April 1, 1999, (22 IR 2349).

**CITATIONS AFFECTED:** 327 IAC 2, 327 IAC 17.

**AUTHORITY:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3.

#### **SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**

Indiana is required by federal law to establish water quality standards for all waters of the state including wetlands. This rulemaking will amend rules in 327 IAC 2 to establish specific water quality standards for Indiana's wetlands. Wetlands are generally areas that have plants that can live in water or wet soil, are wet (flooded or saturated) for part of the year, and have soils, such as muck or peat, that have formed under wet conditions.

This rulemaking will also create a new article, 327 IAC 17, to establish specific procedures and criteria to be used by IDEM's Office of Water Management when it reviews applications for Section 401 water quality certification under the federal Clean Water Act. In determining whether to issue a certification, the state is required to review the proposed activity and determine whether the activity will meet certain federal and state requirements, including state water quality standards. The certification must contain conditions necessary to ensure compliance

with applicable laws. In Indiana, this program is currently being implemented using IDEM's general statutory authority and the water quality standards rule (327 IAC 2-1).

## **SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD**

IDEM requested public comment from April 1, 1999, through April 30, 1999, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following party by the comment period deadline:

Southern Indiana Gas and Electric Company (SIGECO)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* The rule is enormous and could include irreversible harm to the economy of Indiana as well as cause unnecessary mitigations and compliance efforts for which there are no clear standards. (SIGECO)

*Response:* The department has reviewed the potential scope of the rule and has determined that it does not substantially change the way the water quality certification program is currently implemented. The rules will provide a more clear understanding of the department's requirements and the steps an applicant must take to obtain a water quality certification.

*Comment:* Department policy should not be construed as law and put into regulatory language. (SIGECO)

*Response:* The proposed rule for wetland water quality standards mirrors requirements set forth by the United States Environmental Protection Agency (EPA). The rule for water quality implementation procedures has been drafted following similar rule procedures of numerous other states and the recommendations set forth by the EPA.

*Comment:* Sections 301, 302, 303, 306, and 307 of the Clean Water Act refer only to effluents and do not address any other water quality standard. A project that will not exceed these standards should be granted the certification. (SIGECO)

*Response:* Section 401 part (d) of the Clean Water Act provides that "certification provided under this section shall set forth any effluent limitations *and other limitations, and monitoring requirements* necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations *and other limitations*, under section 301 or 302 of this title, standard of performance under section 306 of this title, or prohibition, effluent standard, or pretreatment standard under section 307 of this title, and with *any other appropriate requirement of State law* set forth in such certification..." (Emphasis added). Certifications must comply with the Clean Water Act and state water quality standards, as well as any other applicable state law.

*Comment:* There is no supporting provision in Indiana law for several of the terms needing definitions for use in this rule. For example, there is no definition of compensatory mitigation, what is required by it, nor any performance standards for compensatory mitigation to be found anywhere in Indiana law, and until it is legally supportable, there should be no rule provision regarding compensatory mitigation. (SIGECO)

*Response:* The department has determined that compensatory mitigation, and other measures provided for in the rule, are reasonable and necessary components of the rule. An essential part of the rulemaking process is to develop definitions for objects, ideas, and processes

that have not previously been defined, so that the scope of the rule is made clear. Compensatory mitigation is a component of the EPA guidance on implementing section 404 of the Clean Water Act. Therefore, the department believes it is a necessary and authorized component of this rulemaking. If compensatory mitigation were not provided for in the rule, no impacts to wetlands could be certified under section 401 of the Clean Water Act.

*Comment:* Redundant and unnecessary requirements should be stricken for the rule. The reiteration of certification language used in Clean Air Act submittals is not warranted. (SIGECO)

*Response:* The department does not believe the draft rule contains redundant or unnecessary requirements. Applications for permits and certifications from the department uniformly require a signed statement by the applicant attesting to a truthful and accurate submission.

*Comment:* The reference to “a timely fashion” for submittal of additional information is poor rule language. A specific time frame, such as thirty (30) days, should be written into the regulation to avoid inappropriate time usage by agency personnel and to provide a clear target for applicants. (SIGECO)

*Response:* The wording of the draft rule for water quality certification application requirements (327 IAC 17-2-1(d) states that the department shall promptly contact an applicant with a request for additional information. A requirement to specify an exact amount of time an applicant has to respond to a departmental request is unnecessary and burdensome since the type of information requested may require varying amount of time to provide.

*Comment:* A year is too much time for agency staff to evaluate a 401 certification. If rules are not in place to enable the agency to appraise an application more quickly than a year, then those needed regulations should be developed before this 401 certification rule is attempted. (SIGECO)

*Response:* The Clean Water Act grants states a reasonable amount of time, not to exceed one (1) year, to review a request for a water quality certification. The department currently reviews over eighty percent (80%) of water quality certification applications within sixty (60) calendar days of submission. The department expects to continue to review water quality certifications within this time frame but is within the statutory authority to take up to a year to complete a review and may need to take that amount of time where information on potential impacts to water quality is unavailable or if application information is incomplete.

*Comment:* Entitlement to a 401 certification should only require meeting the provisions of the Clean Water Act and any written state water quality standards. (SIGECO)

*Response:* Section 401 part (d) of the Clean Water Act states, “Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 301 or 302 of this title, standard of performance under section 306 of this title, or prohibition, effluent standard, or pretreatment standard under section 307 of this title, and with any other appropriate requirement of State law set forth in such certification....” Therefore, a water quality certification issued in Indiana must not only comply with the Clean Water Act and state water quality standards, but it must also comply with any other applicable state law.

*Comment:* An applicant for a 401 certification should not have to perform additional

conditions based solely on the questionably supported, often inconsistent judgement of the department. (SIGECO)

*Response:* The Clean Water Act, section 401 part(d), requires states to provide various limitations in a water quality certification to ensure compliance with state and federal laws concerning water quality. The department has no interest in promoting inconsistent judgement and has, for that reason, developed a rule to provide defined and understandable requirements both for the applicant and a departmental reviewer of a water quality certification.

## **REQUEST FOR PUBLIC COMMENTS**

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule.

Mailed comments should be addressed to:

#99-58(WPCB) Wetland water quality certification  
Kari Simonelic  
Rules Section  
Office of Water Management  
Indiana Department of Environmental Management  
P.O. Box 6015  
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the twelfth floor reception desk, Office of Water Management, Indiana Government Center-North, Room 1255, 100 North Senate Avenue, Indianapolis, Indiana.

## **COMMENT PERIOD DEADLINE**

Comments must be postmarked or hand delivered by January 14, 2000.

Additional information regarding this action may be obtained from MaryAnn Stevens, Rules Section, Office of Water Management, (317) 232-8635 or (800) 451-6027 (in Indiana).

## **DRAFT RULE**

SECTION 1. 327 IAC 2-1.8 IS ADDED TO READ AS FOLLOWS:

### **RULE 1.8. Wetland Water Quality Standards**

#### **327 IAC 2-1.8-1 Applicability**

**Authority:** IC 13-14-8-1; IC 13-14-8-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 1. The wetland water quality standards established in this rule apply to all wetlands of the state. (*Water Pollution Control Board; 327 IAC 2-1.8-1*)**

#### **327 IAC 2-1.8-2 Definitions**

**Authority:** IC 13-14-8-1; IC 13-14-8-2

**Affected:** IC 13-11-2-265; IC 13-30; IC 14-22-34

**Sec. 2. The following definitions apply throughout this rule:**

**(1) “Acid bog” means a wetland that typically includes the following characteristics:**

- (A) Located within glacial, moraine, ice-block depressions or kettles, but rarely located in unglaciated areas.**
- (B) The water regime is non-flowing or very slowly flowing.**
- (C) Substrates are saturated and may rise or fall with seasonal water level fluctuations.**
- (D) Water chemistry is acidic.**
- (E) Nutrient availability is low.**
- (F) Composed of sphagnum peat or other low nutrient organic substrates.**
- (G) Indicator plant species may include the following:**

- (i) Arrow grass (*Scheuchzeria palustris americana*).**
- (ii) Bog bladderwort (*Utricularia geminiscapa*).**
- (iii) Bog rosemary (*Andromeda glaucophylla*).**
- (iv) Bog spike rush (*Eleocharis robbinsii*).**
- (v) Cordroot sedge (*Carex chordorrhiza*).**
- (vi) Dense cotton grass (*Eriophorum spissum*).**
- (vii) Dragon’s mouth (*Arethusa bulbosa*).**
- (viii) Dwarf birch (*Betula pumila*).**
- (ix) Grass pink (*Calopogon tuberosus*).**
- (x) Gray bog sedge (*Carex canescens*).**
- (xi) Hair star sedge (*Carex atlantica capillacea*).**
- (xii) Hardhack (*Spiraea tomentosa rosea*).**
- (xiii) Highbush blueberry (*Vaccinium corymbosum*).**
- (xiv) Large cranberry (*Vaccinium macrocarpon*).**
- (xv) Large-fruited star sedge (*Carex echinata*).**
- (xvi) Leatherleaf (*Chamaedaphne calyculata angustifolia*).**
- (xvii) Marsh St. John’s wort (*Hypericum virginicum*).**
- (xviii) Moccasin flower (*Cypripedium acaule*).**
- (xix) Mountain holly (*Nemopanthus mucronata*).**
- (xx) Muck sedge (*Carex limosa*).**
- (xxi) Narrow-leaved sundew (*Drosera intermedia*).**
- (xxii) Orange fringed orchid (*Habenaria ciliaris*).**
- (xxiii) Pitcher plant (*Sarracenia purpurea*).**
- (xxiv) Poison sumac (*Rhus vernix*).**
- (xxv) Round-leaved sundew (*Drosera rotundifolia*).**
- (xxvi) Running bog sedge (*Carex oligosperma*).**
- (xxvii) Rusty cotton grass (*Eriophorum virginicum*).**
- (xxviii) Screwstem (*Bartonia virginica*).**
- (xxix) Silky willow (*Salix sericea*).**
- (xxx) Slender cotton grass (*Eriophorum gracile*).**
- (xxxi) Small cranberry (*Vaccinium oxycoccus*).**
- (xxxii) Smith’s tufted bulrush (*Scirpus smithii*).**
- (xxxiii) Smooth white violet (*Viola pallens*).**
- (xxxiv) Snake-mouth orchid (*Pogonia ophioglossoides*).**

- (xxxv) Tamarack (*Larix laricina*).
- (xxxvi) Three-seeded bog sedge (*Carex trisperma*).
- (xxxvii) Two-seeded sedge (*Carex disperma*).
- (xxxviii) Virginia chain fern (*Woodwardia virginica*).
- (xxxix) White beak rush (*Rhynchospora alba*).
- (xxxx) Yellow avens (*Geum aleppicum*).

(2) “Circumneutral bog” means a wetland that typically includes the following characteristics:

- (A) Located within glacial, moraine, ice-block depressions or kettles, but rarely located in unglaciated areas.
- (B) Ground water inflow creates a minerotrophic head of water.
- (C) Water is non-flowing or very slowly flowing.
- (D) Substrates are saturated and may rise or fall with seasonal water level fluctuations.
- (E) Water chemistry is circumneutral to slightly acidic.
- (F) Deep rooted vegetation may be exposed to the alkaline or circumneutral minerotrophic ground water while shallow roots inhabit more acidic layers of the peat substrate.
- (G) Nutrient availability is low.
- (H) Composed of sphagnum peat or other low nutrient organic substrates.
- (I) Indicator plant species may include the following:
  - (i) Bog panicked sedge (*Carex diandra*).
  - (ii) Bog willow (*Salix pedicellaris hypoglauca*).
  - (iii) Buckbean (*Menyanthes trifoliata minor*).
  - (iv) Flat-leaved bladderwort (*Utricularia intermedia*).
  - (v) Greenbog sedge (*Carex brunnescens*).
  - (vi) Highbush blueberry (*Vaccinium corymbosum*).
  - (vii) Marsh cinquefoil (*Potentilla palustris*).
  - (viii) Narrow-leaved wooly sedge (*Carex lasiocarpa americana*).
  - (ix) Northern gooseberry (*Ribes hirtellum*).
  - (x) Northern panic grass (*Panicum boreale*).
  - (xi) Pitcher plant (*Sarracenia purpurea*).
  - (xii) Poison sumac (*Rhus vernix*).
  - (xiii) Slender sedge (*Carex leptalea*).
  - (xiv) Small bladderwort (*Utricularia minor*).
  - (xv) Tamarack (*Larix laricina*).
  - (xvi) White beak rush (*Rhynchospora alba*).

(3) “Circumneutral seep” means a wetland that typically includes the following characteristics:

- (A) Located on the lower slopes of hills.
- (B) The water regime is composed of a cold ground water water source.
- (C) Water chemistry is circumneutral to alkaline.
- (D) Nutrient availability is low but with high mineral content.
- (E) Substrates are organic or mineral.
- (F) Indicator plant species may include the following:

- (i) Fen betony (*Pedicularis lanceolata*).
  - (ii) Hairy-fruited lake sedge (*Carex tricocarpa*).
  - (iii) Marsh marigold (*Caltha palustris*).
  - (iv) Queen of the prairie (*Filipendula rubra*).
  - (v) Skunk cabbage (*Symplocarpus foetidus*).
  - (vi) Swamp goldenrod (*Solidago patula*).
  - (vii) Swamp saxifrage (*Saxifraga pennsylvanica*).
  - (viii) Turtlehead (*Chelone glabra*).
- (4) “Commissioner” means the commissioner of the department of environmental management.
- (5) “Compensatory mitigation” means the restoration, creation or rehabilitation of a wetland or other waters of the state to compensate for losses of designated and existing uses.
- (6) “Control document” means one (1) of the following:
- (A) An NPDES permit issued under 327 IAC 5.
  - (B) A water quality certification issued under 327 IAC 17.
  - (C) A facility construction permit issued under 327 IAC 3.
  - (D) An industrial pretreatment permit issued by the commissioner under 327 IAC 5.
  - (E) A record of decision issued pursuant to 42 U.S.C. § 9601.
  - (F) A commissioner’s order issued under IC 13-30.
  - (G) An agreed order issued under IC 13-30.
  - (H) A consent decree issued under 33 U.S.C. § 1319.
- (7) “Cypress swamp” means a forested wetland that typically includes the following characteristics:
- (A) Located within a depression or slough associated with one (1) or more of the following:
    - (i) Wabash River.
    - (ii) Ohio River.
    - (iii) The major tributaries of item (i) or (ii).
  - (B) Seasonally to permanently saturated or ponded.
  - (C) Water chemistry is indistinct.
  - (D) Nutrient availability is indistinct.
  - (E) Composed of very poorly drained and aerated soils, usually not peat.
  - (F) Indicator plant species may include the following:
    - (i) American storax (*Styrax americana*).
    - (ii) Bald cypress (*Taxodium distichum*).
    - (iii) Bloodleaf (*Iresine rhizomatosa*).
    - (iv) Catbird grape (*Vitis palmata*).
    - (v) Climbing hempweed (*Mikania scandens*).
    - (vi) Featherfoil (*Hottonia inflata*).
    - (vii) Overcup oak (*Quercus lyrata*).
    - (viii) Swamp cottonwood (*Populus heterophylla*).
    - (ix) Water locust (*Gleditsia aquatica*).
    - (x) White milkweed (*Asclepias perennis*).

(8) “Designated uses” are those uses specified in this rule for each wetland or segment whether or not they are being attained.

(9) “Dune and swale” means a complex of sand dunes and wetlands that typically includes the following characteristics:

(A) Sand dunes divided by low lying areas referred to as swales that:

(i) are located adjacent to or near Lake Michigan; and

(ii) may contain one (1) or more of the following:

(AA) Wet prairies.

(BB) Pannes.

(CC) Coastal remnant communities.

(B) Hydrology is ground water driven.

(C) Water chemistry is alkaline and carbonate rich.

(D) Nutrient availability is indistinct.

(E) Substrate is wet calcareous sand.

(F) Indicator plant species may include the following:

(i) Beach pea (*Lathyrus japonicus glaber*).

(ii) Common bog arrow grass (*Triglochin maritima*).

(iii) Dune goldenrod (*Solidago racemosa gillmanii*).

(iv) Dune thistle (*Cirsium pitcheri*).

(v) Dune willow (*Salix syrticola*).

(vi) Early fen sedge (*Carex crawei*).

(vii) False golden sedge (*Carex garberi*).

(viii) False heather (*Hudsonia tomentosa*).

(ix) Fringed gentian (*Gentiana crinita*).

(x) Golden sedge (*Carex aurea*).

(xi) Green yellow sedge (*Carex viridula*).

(xii) Hair bladderwort (*Utricularia subulata*).

(xiii) Horned bladderwort (*Utricularia cornuta*).

(xiv) Humped bladderwort (*Utricularia gibba*).

(xv) Indian paintbrush (*Castilleja coccinea*).

(xvi) Jack pine (*Pinus banksiana*).

(xvii) Jointweed (*Polygonella articulata*).

(xviii) Kalm’s St. John’s wort (*Hypericum kalmianum*).

(xix) Large yellow sedge (*Carex flava*).

(xx) Northern panic grass (*Panicum boreale*).

(xxi) Pale false foxglove (*Agalinis skinneriana*).

(xxii) Prairie gray sedge (*Carex conoidea*).

(xxiii) Rose gentian (*Sabatia angularis*).

(xxiv) Sand club moss (*Selaginella rupestris*).

(xxv) Sea rocket (*Cakile edentula*).

(xxvi) Seaside spurge (*Euphorbia polygonifolia*).

(xxvii) Small yellow lady’s slipper (*Cypripedium calceolus parviflorum*).

(xxviii) Tall nut rush (*Scleria triglomerata*).

(xxix) Twig rush (*Cladium mariscoides*).



- (xxx) Wrinkle-sheathed spike (*Eleocharis olivacea*).
- (10) “Duration”, in regard to inundation or soil saturation, means the length of time, during a growing season, when:
- (A) water stands at or above the soil surface; or
  - (B) the soil is saturated.
- (11) “Existing uses” means those uses actually attained in the wetland on or after November 28, 1975, whether or not they are included under section 3 of this rule.
- (12) “Fen” means a wetland that typically includes the following characteristics:
- (A) Formed from the discharge of water that travels through carbonate rich formations.
  - (B) Located:
    - (i) in general, near glacial formations such as:
      - (AA) kames;
      - (BB) eskers; or
      - (CC) moraines; or
    - (ii) also near river bluffs or dunes and in flats associated with the glacial formations listed in item (i).
  - (C) Hydrology is minerotrophic ground water.
  - (D) The water regime is very slowly flowing water that fluctuates seasonally.
  - (E) Water chemistry is alkaline and rich in carbonates.
  - (F) Nutrient availability is low but with high mineral content.
  - (G) Substrate is marl, peat, or muck.
  - (H) Indicator plant species may include the following:
    - (i) Alder buckthorn (*Rhamnus alnifolia*).
    - (ii) Black ash (*Fraxinus nigra*).
    - (iii) Bog goldenrod (*Solidago uliginosa*).
    - (iv) Bog lobelia (*Lobelia kalmii*).
    - (v) Bog valerian (*Valeriana uliginosa*).
    - (vi) Common valerian (*Valeriana ciliata*).
    - (vii) Dwarf birch (*Betula pumila*).
    - (viii) Eastern white cedar (*Thuja occidentalis*).
    - (ix) False asphodel (*Tofieldia glutinosa*).
    - (x) Fen paniced sedge (*Carex prairea*).
    - (xi) Fen star sedge (*Carex sterilis*).
    - (xii) Grass of parnassus (*Parnassia glauca*).
    - (xiii) Hair beak rush (*Rhynchospora capillacea*).
    - (xiv) Hemlock parsley (*Conioselinum chinense*).
    - (xv) Lance-leaved buckthorn (*Rhamnus lanceolata*).
    - (xvi) Large yellow sedge (*Carex flava*).
    - (xvii) Low calamint (*Satureja arkansana*).
    - (xviii) Low nut rush (*Scleria verticillata*).
    - (xix) Marsh bellflower (*Campanula uliginosa*).
    - (xx) Marsh club moss (*Selaginella apoda*).
    - (xxi) Marsh wild timothy (*Muhlenbergia glomerata*).
    - (xxii) Mead’s stiff sedge (*Carex meadii*).

- (xxiii) Narrow-leaved cotton grass (*Eriophorum angustifolium*).
- (xxiv) Narrow-leaved loosestrife (*Lysimachia quadriflora*).
- (xxv) Northern bog orchid (*Habenaria hyperborea huronensis*).
- (xxvi) Northern gooseberry (*Ribes hirtellum*).
- (xxvii) Ohio goldenrod (*Solidago ohioensis*).
- (xxviii) Prairie star sedge (*Carex interior*).
- (xxix) Rough bedstraw (*Galium asprellum*).
- (xxx) Rush aster (*Aster borealis*).
- (xxxi) Sage willow (*Salix candida*).
- (xxxii) Shrubby cinquefoil (*Potentilla fruticosa*).
- (xxxiii) Slender bog arrow grass (*Triglochin palustris*).
- (xxxiv) Small bladderwort (*Utricularia minor*).
- (xxxv) Small fringed gentian (*Gentiana procera*).
- (xxxvi) Snake-mouth orchid (*Pogonia ophioglossoides*).
- (xxxvii) Swamp goldenrod (*Solidago patula*).
- (xxxviii) Swamp thistle (*Cirsium muticum*).
- (xxxix) Sweet william phlox (*Phlox maculata*).
- (xxxx) Twig rush (*Cladium mariscoides*).
- (xxxxi) White beak rush (*Rhynchospora alba*).
- (xxxxii) White lady's slipper (*Cypripedium candidum*).
- (xxxxiii) Wicket spike rush (*Eleocharis rostellata*).

(13) "Frequency", in regard to inundation or soil saturation, means the periodicity of coverage of an area by surface water or soil saturation.

(14) "Growing season" means the portion of the year when soil temperature, measured twenty (20) inches below the surface, is above biological zero (five degrees (5°) Celsius or forty-one degrees (41°) Fahrenheit).

(15) "Habitat" means the environment occupied by individuals of a particular species, population, or community.

(16) "Inundated" means a condition of temporary or permanent water coverage of a land surface.

(17) "Marl" means a deposit of crumbling, earthy material composed of clays, carbonates of calcium and magnesium, and remnants of shells.

(18) "Marl beach" means a fen-like wetland that typically includes the following characteristics:

- (A) Located along a lake shoreline mostly in the northeastern portion of Indiana.
- (B) Shallowly inundated with water in the spring but dry during the summer.
- (C) Water chemistry is alkaline.
- (D) Nutrient availability is indistinct.
- (E) Substrate is marl.
- (F) Indicator plant species may include the following:
  - (i) Fen star sedge (*Carex sterilis*).
  - (ii) Flat-leaved bladderwort (*Utricularia intermedia*).
  - (iii) Golden-seeded spike rush (*Eleocharis elliptica*).

- (iv) Hair beak-rush (*Rhynchospora capillacea*).
  - (v) Short-headed rush (*Juncus brachycephalus*).
  - (vi) Slender bog arrow grass (*Triglochin palustris*).
  - (vii) Twig rush (*Cladium mariscoides*).
  - (viii) Wicket spike rush (*Eleocharis rostellata*).
  - (ix) Wiry panic grass (*Panicum flexile*).
- (19) “Muck flat” means a shoreline or lakeshore wetland that typically includes the following characteristics:
- (A) Located in the northern portion of the state at the margins of lakes or covering shallow basins.
  - (B) Has a basin water level that fluctuates during a season or from year to year in response to the amount of precipitation.
  - (C) May float on the water surface but is usually inundated during high water periods and exposed periodically.
  - (D) Water chemistry is indistinct.
  - (E) Nutrient availability is indistinct.
  - (F) Substrate is peat.
  - (G) Indicator plant species may include the following:
    - (i) Autumn sedge (*Fimbristylis autumnalis*).
    - (ii) Black-fruited spike (*Eleocharis melanocarpa*).
    - (iii) Bog spike rush (*Eleocharis robbinsii*).
    - (iv) Brown-fruited rush (*Juncus pelocarpus*).
    - (v) Carey’s heartsease (*Polygonum careyi*).
    - (vi) Chestnut sedge (*Fimbristylis puberula*).
    - (vii) Cross milkwort (*Polygala cruciata aquilonia*).
    - (viii) Floating bladderwort (*Utricularia inflata minor*).
    - (ix) Grass beak rush (*Rhynchospora globularis recognita*).
    - (x) Horned beak rush (*Rhynchospora macrostachya*).
    - (xi) Hyssop hedge nettle (*Stachys hyssopifolia*).
    - (xii) Long-beaked bald rush (*Psilocarya scirpoides*).
    - (xiii) Meadow beauty (*Rhexia virginica*).
    - (xiv) Netted nut rush (*Scleria reticularis*).
    - (xv) Pipewort (*Eriocaulon septangulare*).
    - (xvi) Pursh’s tufted bulrush (*Scirpus purshianus*).
    - (xvii) Round-headed rush (*Juncus scirpoides*).
    - (xviii) Sand panic grass (*Panicum spretum*).
    - (xix) Sessile water horehound (*Lycopus amplexans*).
    - (xx) Slender-leaved goldenrod (*Solidago tenuifolia*).
    - (xxi) Smith’s tufted bulrush (*Scirpus smithii*).
    - (xxii) Southern yellow flax (*Linum intercursum*).
    - (xxiii) Stiff yellow flax (*Linum striatum*).
    - (xxiv) Tall yellow-eyed grass (*Xyris difformis*).
    - (xxv) Umbrella sedge (*Fuirena pumila*).
    - (xxvi) Warty panic grass (*Panicum verrucosum*).
    - (xxvii) Water pennywort (*Hydrocotyle umbellata*).

(xxviii) Wrinkle-sheathed spike (*Eleocharis olivacea*).

(xxix) Yellow-eyed grass (*Xyris torta*).

(20) “Practicable alternative” means a way of configuring a project that is available and capable of being done after taking into consideration the following overall project purposes:

(A) Cost.

(B) Existing technology.

(C) Logistics.

(21) “Prevalent vegetation” means the plant community or communities that occur in an area during a specific period. The prevalent vegetation is characterized by the dominant macrophytic species that comprises the plant community.

(22) “Rare or special concern species” means those species included in the January 22, 1997, database for endangered, threatened, rare, and special concern species maintained by the Indiana Natural Heritage Data Center, Division of Nature Preserves, Division of Natural Resources.

(23) “Sand flat” means a shoreline or lakeshore wetland located in the northern portion of Indiana that has the same characteristics as a muck flat with the exception that the substrate is composed of sand.

(24) “Saturated soil condition” means a situation where all easily drained voids between soil particles in the root zone are temporarily or permanently filled with water up to the soil surface at a pressure greater than atmospheric pressure.

(25) “Sinkhole pond” means a wetland that typically includes the following characteristics:

(A) Located within depressions formed by chemical and physical weathering of the underlying limestone.

(B) Found in the karst region of southern Indiana.

(C) Permanently inundated or saturated with water and dry only in drought years.

(D) Water chemistry is alkaline to circumneutral.

(E) Nutrient availability is indistinct.

(F) Substrate is indistinct.

(G) Indicator plant species may include the following:

(i) Branched bur reed (*Sparganium angrocladum*).

(ii) Bristly sedge (*Carex comosa*).

(iii) Broad-leafed panicled sedge (*Carex decomposita*).

(iv) Humped bladderwort (*Utricularia gibba*).

(v) Sharp scaled manna grass (*Glyceria acutiflora*).

(vi) Swamp loosestrife (*Decodon verticillatus*).

(vii) Three-way sedge (*Dulichlum arundinaceum*).

(viii) Water-hissop (*Bacopa rotundifolia*).

(26) “Sinkhole swamp” means a wetland that typically has the following characteristics:

(A) Located within depressions formed by chemical and physical weathering of the underlying limestone.

(B) Found in the karst region of southern Indiana.

- (C) Permanently inundated or saturated with water and dry only in drought years.
- (D) Water chemistry is alkaline to circumneutral.
- (E) Nutrient availability is indistinct.
- (F) Substrate is indistinct.
- (G) Indicator plant species may include the following:
  - (i) Broad-leafed panicled sedge (*Carex decomposita*).
  - (ii) Greater hop sedge (*Carex gigantea*).
  - (iii) Horned beak rush (*Rhynchospora corniculata*).
  - (iv) Marsh elder (*Itea virginica*).
  - (v) Netted chain fern (*Woodwardia areolata*).
  - (vi) Small spearwort (*Ranunculus pusillus*).
  - (vii) Swamp cottonwood (*Populus heterophylla*).
  - (viii) Walter's St. John's wort (*Triadenum walteri*).
- (27) "Threatened or endangered species" means one (1) or more of the following:
  - (A) Federal endangered and threatened species listed by the United States Fish and Wildlife Service pursuant to 15 U.S.C. 1533\*.
  - (B) Indiana threatened or endangered species listed by the department of natural resources pursuant to IC 14-22-34.
- (28) "Waters" or "waters of the state" has the meaning set forth in IC 13-11-2-265.
- (29) "Wetland" means an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

\*The federal endangered and threatened species listed by the United States Fish and Wildlife Service pursuant to 15 U.S.C. 1533 is incorporated by reference. Copies of this list may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 2-1.8-2*)

### **327 IAC 2-1.8-3 Wetland designated uses**

**Authority:** IC 13-14-8-1; IC 13-14-8-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 3. All wetlands are designated to include the following uses:**

- (1) Habitat for aquatic organisms including fish, crustaceans, mollusks, insects, annelids, and planktonic organisms.
- (2) Habitat for wetland flora.
- (3) Habitat for resident and transient wildlife species, including water dependent mammals, birds, reptiles, and amphibians.
- (4) Surface and ground water movement that may include the maintenance of low

water stream flow, ground water discharge, ground water recharge, and peak flow suppression.

**(5) Recreational, educational, scientific, and natural aesthetic uses.**

*(Water Pollution Control Board; 327 IAC 2-1.8-3)*

#### **327 IAC 2-1.8-4 Classification of wetlands**

**Authority:** IC 13-14-8-1; IC 13-14-8-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 4. A wetland, other than a wetland that has been designated as an outstanding state resource water or an outstanding national resource water pursuant to section 7 of this rule, shall be classified as a Tier I or a Tier II wetland based upon the wetland's sensitivity to disturbance, rarity, and potential to be adequately replaced by compensatory mitigation.**

**A wetland shall be classified as follows:**

**(1) Tier I, unless the wetland is classified as a Tier II wetland under subdivision (2).**

**(2) Tier II, if it meets one (1) of the following qualifications:**

**(A) The department of natural resources has documentation of the presence of a wetland-dependent, threatened or endangered species. If a qualified expert submits a demonstration to the department showing that the wetland does not contain suitable habitat to support the threatened or endangered species, then the wetland is not a Tier II wetland.**

**(B) The wetland is located within a one-half (0.5) mile radius of a site where the presence of a wetland-dependent, threatened or endangered species has been documented by the department of natural resources, unless:**

- (i) the wetland does not contain suitable habitat to support the threatened or endangered species; or**
- (ii) impacts to the wetland will not adversely affect the threatened or endangered species.**

**(C) The wetland is one (1) of the following:**

- (i) Acid bog.**
- (ii) Circumneutral bog.**
- (iii) Cypress swamp.**
- (iv) Fen.**
- (v) Dune and swale.**
- (vi) Muck flat.**
- (vii) Sinkhole pond.**
- (viii) Sinkhole swamp.**
- (ix) Sand flat.**
- (x) Marl beach.**

*(Water Pollution Control Board; 327 IAC 2-1.8-4)*

#### **327 IAC 2-1.8-5 Wetland antidegradation implementation standard and procedures**

**Authority:** IC 13-14-8-1; IC 13-14-8-2

**Affected:** IC 13-18-3; IC 13-18-4; IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5

**Sec. 5. (a) Designated and existing uses for Tier I and Tier II wetlands must be maintained and protected so that impacts do not result in a net loss of wetland acreage or uses, except as allowed by this section.**

**(b) Wetland antidegradation requirements must be according to the following:**

**(1) For a Tier I wetland, designated and existing uses shall be maintained and protected, and no degradation shall be allowed unless it is demonstrated that:**

**(A) there is no practicable alternative, based on technical, social, or economic criteria, that would have less adverse impact on the wetland ecosystem;**

**(B) the impact will not result in significant degradation to the aquatic ecosystem, as determined using the criteria set forth in 40 CFR 230.10 (c)\*;**

**(C) appropriate and practicable steps will be taken to minimize potential adverse impacts on the wetland ecosystem; and**

**(D) compensatory mitigation will replace the impacted wetland and its uses with a wetland of the same type that supports uses equal to or higher than existing uses of the impacted wetland, unless it is determined to be unnecessary by the commissioner because no significant impacts to water quality will occur. Wetland impacts greater than one-tenth (0.1) acre shall be considered significant. For all other impacts, the commissioner shall consider the following factors to determine whether a project will have a significant impact on water quality:**

**(i) Whether the project involves the maintenance, repair, or rehabilitation of existing man-made structures, excluding drainage ditches.**

**(ii) The secondary and cumulative impacts of the project.**

**(iii) The proximity and hydrologic connection of the wetland, proposed to be impacted, to other water bodies.**

**(iv) The duration of the activity associated with the project.**

**(v) The plant species diversity and fish and wildlife habitat components of the water to be impacted.**

**(vi) Whether the project is being undertaken to control, abate, or correct an environmental problem or threat to the environment, including a response action pursuant to one (1) of the following:**

**(AA) The Comprehensive Environmental Response, Compensation, and Liability Act according to 42 U.S.C. 9601\*\*.**

**(BB) A corrective action pursuant to the Resource Conservation Recovery Act according to 42 U.S.C. 6901\*\*\*.**

**(CC) An Underground Storage Tank corrective action under IC 13-23-13.**

**(DD) A remediation of petroleum releases under IC 13-24-1.**

**(EE) A voluntary remediation under IC 13-25-5.**

**(FF) An abatement or correction of any polluted condition under IC 13-18-7.**

**The commissioner may require that the compensatory mitigation performed under**

clause (D) be completed and approved prior to any impact to the wetland.

(2) For a Tier II wetland, the following requirements apply:

(A) The designated uses of a Tier II wetland shall be maintained and protected, and no degradation shall be allowed unless it is demonstrated that:

(i) there is no practicable alternative, based on technical, social, or economic criteria, that would have less adverse impact on the wetland ecosystem. Practicable alternatives are presumed to be available for a Tier II wetland unless it is clearly demonstrated otherwise;

(ii) appropriate and practicable steps will be taken to minimize potential adverse impacts on the wetland ecosystem;

(iii) the impact will not result in significant degradation to the aquatic ecosystem, as determined using the criteria set forth in 40 CFR 230.10 (c)\*;

(iv) compensatory mitigation:

(AA) shall be performed to replace the existing Tier II wetland and its uses with a wetland of the same type that supports uses equal to or higher than existing uses of the impacted wetland; and

(BB) if allowed, shall be completed by the applicant and approved by the commissioner prior to any impact to the wetland.

If compensatory mitigation is not practicable, then impacts to Tier II wetlands shall not be permitted.

(B) The applicant shall demonstrate, using the procedures set forth in 327 IAC 17-3-5, that the proposed degradation is necessary to accommodate important social and economic development in the area in which the water body is located.

(C) Upon receipt of a complete antidegradation demonstration, the commissioner shall provide public notice, request comment, and if requested, schedule and hold a public meeting on the demonstration.

(c) In addition to the other provisions of this section, the commissioner shall consider the following in determining whether to allow an impact to a wetland:

(1) The designated and existing uses that a wetland provides.

(2) The anticipated impact of the proposed loss of wetland acreage that:

(A) permanently or seasonally contains a threatened or endangered species; or

(B) provides habitat for a threatened or endangered species.

(3) Water quality impacts, including the cumulative impacts in a watershed, that may be a consequence of approving a request to degrade a wetland.

(d) The commissioner shall ensure that no degradation of a wetland designated as an outstanding state resource water (OSRW) or outstanding national resource water (ONRW) will occur. Degradation to these wetlands is prohibited unless the following conditions are met:



- (1) The impact will last less than twelve (12) months.**
- (2) The person intending to cause the impact receives water quality certification for the impact.**
- (3) The applicant minimizes and justifies the short term, temporary impact to the satisfaction of the commissioner.**
- (4) The applicant demonstrates to the commissioner that no practicable alternative exists to avoid the impact using the criteria set forth in 327 IAC 17-3-5.**

**\*40 CFR 230.10 (c) is incorporated by reference. Copies of this law may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46206.**

**\*\*42 U.S.C. 9601 is incorporated by reference. Copies of this law may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46206.**

**\*\*\*42 U.S.C. 6901 is incorporated by reference. Copies of this law may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 2-1.8-5*)**

**327 IAC 2-1.8-6 Minimum water quality criteria for wetlands**

**Authority: IC 13-14-8-1; IC 13-14-8-2**

**Affected: IC 13-18-3; IC 13-18-4**

**Sec. 6. (a) In addition to water quality criteria in:**

- (1) 327 IAC 2-1-6(a);**
- (2) 327 IAC 2-1-6(b)(1);**
- (3) 327 IAC 2-1-6(b)(4);**
- (4) 327 IAC 2-1-6(b)(5);**
- (5) 327 IAC 2-1-6(d);**
- (6) 327 IAC 2-1.5-8(b);**
- (7) 327 IAC 2-1.5-8(c)(1);**
- (8) 327 IAC 2-1.5-8(c)(4);**
- (9) 327 IAC 2-1.5-8(c)(5); and**
- (10) 327 IAC 2-1.5-8(e);**

**the criteria in this section apply at all times and places within a wetland.**

**(b) The following characteristics of a wetland must be maintained:**

- (1) Natural water temperature variations.**

- (2) The natural chemical, nutrient, and dissolved oxygen regime of a wetland.
- (3) The normal movement of aquatic fauna.
- (4) The natural pH range of a wetland.
- (5) Normal water flows, levels, or elevations.
- (6) Normal extent and duration of saturation and inundation.
- (7) Hydrological conditions necessary to support biological and physiological characteristics present in a wetland.

(c) Water quality necessary to support existing habitats and the populations of water dependant flora and fauna shall be protected to prevent significant adverse impacts on the following:

- (1) Food supplies for aquatic life and wildlife.
- (2) Reproductive and nursery areas.

*(Water Pollution Control Board; 327 IAC 2-1.8-6)*

**327 IAC 2-1.8-7 Criteria to classify a wetland as an outstanding state resource water or an outstanding national resource waters**

**Authority: IC 13-14-8-1; IC 13-14-8-2**

**Affected: IC 14-31-1-8; IC 14-31-1-11; IC 13-18-3; IC 13-18-4**

**Sec. 7. (a) A wetland may be recommended for designation as an outstanding state resource water (OSRW) if one (1) of the following is met:**

- (1) The wetland is one of the following types:**

- (A) Acid bog.
- (B) Circumneutral bog.
- (C) Cypress swamp.
- (D) Bog.
- (E) Fen.
- (F) Dune swales.
- (G) Muck flats.
- (H) Sinkhole pond.
- (I) Sinkhole swamp.
- (J) Sand flats.
- (K) Marl beach.

- (2) A threatened or endangered species is present in the wetland on a permanent or seasonal basis.**

- (3) Four (4) out of the following six (6) conditions occur in the wetland:**

- (A) At least eighty percent (80%) of the wetland species considered characteristic of the community type are present.
- (B) A rare or special concern species is present in the wetland on a permanent or seasonal basis.
- (C) There is no significant anthropogenic degradation or damage to the wetland.
- (D) Invasive exotic species cover less than ten percent (10%) of the wetland area.

(E) There is no significant alteration of adjacent slopes and uplands from agricultural production, residential, commercial, or industrial activities.

(F) The wetland is located wholly or partially within or adjoining to the following types of managed lands:

- (i) Land owned and managed by an incorporated land trust.
- (ii) Land dedicated as a state nature preserve under IC 14-31-1-11.
- (iii) A registered natural area under IC 14-31-1-8.
- (iv) Other lands managed by state or federal natural resource agencies.

(b) A wetland that qualifies for designation as an outstanding state resource water under subsection (a) and has national significance or value may be designated as an outstanding national resource water. A wetland that has national significance or value includes wetlands that receive protection through official action, such as:

- (1) federal or state law;
- (2) presidential or secretarial action;
- (3) international treaty; or
- (4) interstate compact.

(*Water Pollution Control Board; 327 IAC 2-1.8-7*)

**327 IAC 2-1.8-8 Procedures to list a wetland as an outstanding state resource water or outstanding national resource water**

**Authority:** IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-5

**Affected:** IC 13-14-8; IC 13-14-9; IC 13-18-3; IC 13-18-4

**Sec. 8. (a)** A wetland that meets the criteria of section 7 of this rule may be recommended to the water pollution control board (board) for designation as an outstanding state resource water (OSRW) or outstanding national resource water (ONRW) through one (1) of the following procedures:

- (1) A proposal for designation that meets the requirements of IC 13-14-8-5 may be submitted to the board in the manner described in subsection (b).
- (2) The commissioner may commence a rulemaking under IC 13-14-8 and IC 13-14-9.

(b) In March of each year, the commissioner shall publish a notice in the *Indiana Register* that any person may submit a nomination for a wetland to be considered for designation as an OSRW or ONRW. A nomination submitted under this subsection must:

- (1) be received by the commissioner within sixty (60) days after publication of the notice;
- (2) be submitted on an application form consistent with the form published in the *Indiana Register*;
- (3) include information that supports the designation of the nominated wetland, including information that shows that the wetland meets the applicable prerequisites for designation specified in section 7 of this rule; and
- (4) otherwise meet the requirements of IC 13-14-8-5.

**(c) If the board receives a proposal for designation pursuant to subsection (a)(1) or if the commissioner commences a rulemaking pursuant to subsection (a)(2), then the commissioner shall do the following:**

**(1) Prepare a detailed analysis of the potential designation that, at a minimum, must include the following:**

**(A) A specific delineation of the boundaries of the wetland and of the watershed area that would be affected by the applicable implementation procedures.**

**(B) A detailed analysis of the reasons that the wetland is being proposed for special designation.**

**(C) A detailed description of the procedures that will be followed by the commissioner and by the board in considering whether the wetland should be designated.**

**(D) A comparison of the existing antidegradation requirements of the wetland to all potential antidegradation requirements applicable to that wetland if designated as an OSRW or an ONRW.**

**(2) Prepare a summary document of the detailed analysis required under subdivision (1) that shall be mailed, using certified mail with return receipt requested, within thirty (30) days of completion of the analysis, to the following parties:**

**(A) All interested parties that have requested notice of proposed designations.**

**(B) All local government units affected by the designation and implementation procedures.**

**(C) All NPDES permit holders affected by the designation and the implementation procedures.**

**(D) The property owner or owners of the wetland and all property owners adjacent to the wetland under consideration for designation as an OSRW or ONRW.**

**(E) Persons with rights to water or minerals on the property of the proposed OSRW or ONRW.**

**(F) Owners of record holding easements or other encumbrances.**

**(3) Initiate a rulemaking, under IC 13-14-9, to designate the wetland as either an outstanding state resource water or an outstanding national resource water within ninety (90) days after mailing the summary document required by subdivision (2).**

**(4) Include as part of the first public comment notice period required under IC 13-14-9-3, information about the availability of the detailed analysis required under subdivision (1) and include the summary document required under subdivision (2).**

*(Water Pollution Control Board; 327 IAC 2-1.8-8)*

**SECTION 2. 327 IAC 17 IS ADDED TO READ AS FOLLOWS:**

## **Article 17. WATER QUALITY CERTIFICATION**

### **Rule 1. Water Quality Certification - General Provisions**

### **327 IAC 17-1-1 Purpose**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 1.** This article establishes procedures and criteria for the review of application for state water quality certification required by section 401 of the federal Clean Water Act, 33 U.S.C. § 1341. It is the purpose of this article, consistent with the Clean Water Act, to maintain the chemical, physical, and biological integrity of the waters of the state and achieve no overall net loss of the existing wetlands resource base with respect to wetlands acreage and existing and designated uses in the state. (*Water Pollution Control Board; 327 IAC 17-1-1*)

### **327 IAC 17-1-2 Applicability**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 2. (a)** This article governs the issuance of water quality certification by the department of environmental management under section 401 of the Clean Water Act, 33 USC §1341. Section 401(a)(1) of the Clean Water Act requires that an applicant for a federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, that may result in any discharge into navigable waters of the United States, shall obtain, from the state where the discharge does or will originate, a water quality certification that the discharge will comply with applicable provisions of sections 301, 302, 303, 306, and 307 of the Clean Water Act (33 USC §§1311, 1312, 1313, 1316, and 1317). Section 401(d) requires the water quality certification to set forth any requirements necessary to assure that the applicant will comply with the applicable provisions of the Clean Water Act and state law, including water quality standards.

**(b)** Federal permits or licenses to which this rule applies include the following:

**(1)** A permit from the U.S. Army Corps of Engineers issued pursuant to:

**(A)** section 10 of the River and Harbors Act; or

**(B)** section 404 of the federal Clean Water Act.

**(2)** A license issued by the Federal Energy Regulatory Commission.

(*Water Pollution Control Board; 327 IAC 17-1-2*)

### **327 IAC 17-1-3 Requirement for a water quality certification**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 3.** No person may conduct an activity that requires a federal permit or license and may result in a discharge into waters of the United States unless the person has received a water quality certification or waiver under this article from the department of environmental management. (*Water Pollution Control Board; 327 IAC 17-1-3*)

## **327 IAC 17-1-4 Definitions**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-2

**Affected:** IC 13-11-2

**Sec. 4.** In addition to the applicable definitions contained in IC 13-11-2, the following definitions apply throughout this rule:

- (1) “Administrator”** means the administrator of the United States Environmental Protection Agency or an authorized representative, including the regional administrator for Region V.
- (2) “Applicable provisions of federal law and state law”** means the provisions of sections 301, 302, 303, 306, 307 of the Clean Water Act (33 USC §§ 1311, 1312, 1313, 1316, 1317) and other appropriate provisions of Indiana law, including state water quality standards.
- (3) “Applicant”** means an individual, corporation, or other entity that owns a site where a project, that is the subject of an application for a water quality certification, is located.
- (4) “Clean Water Act”** means the federal Water Pollution Control Act pursuant to 33 U.S.C. § 1341.
- (5) “Commissioner”** means the commissioner of the department of environmental management.
- (6) “Compensatory mitigation”** means the restoration, creation, or rehabilitation of a wetland or other waters of the state to compensate for losses of designated and existing uses.
- (7) “Corps general permit”** means a permit that:
  - (A)** authorizes a category of discharges of dredged or fill material under the Clean Water Act where the categories of discharge:
    - (i)** are similar in nature;
    - (ii)** will cause only minimal adverse environmental effects when performed separately;
    - (iii)** will have only minimal cumulative adverse effect on the environment; and
  - (B)** is issued by the Corps of Engineers pursuant to 33 U.S.C. 1344 (e).
- (8) “Corps individual permit”** means a permit issued by the Corps of Engineers pursuant to 33 U.S.C. 1344 (a).
- (9) “Corps of Engineers”** means the United States Department of the Army, Corps of Engineers.
- (10) “Cumulative impacts”** means the effects on waters of the state that are attributable to the collective effect of multiple discharges.
- (11) “Emergent wetland”** means a wetland that is characterized by erect, rooted, herbaceous hydrophytes, excluding mosses and lichens.
- (12) “Enhancement”** means the conversion of one wetland type to another with a higher perceived value; it is considered to be an impact to a wetland’s existing and designated uses.
- (13) “Farmed wetland”** means a wetland that was drained, dredged, filled, leveled, or otherwise manipulated before December 23, 1985, for the purpose of, or to have

the effect of, making the production of an agricultural commodity possible, while continuing to meet specific wetland hydrologic criteria.

(14) “Final decision” means a decision by the department to issue, deny, modify, revoke, or waive a section 401 water quality certification.

(15) “Forested wetland” means a wetland dominated by woody vegetation that has a diameter, at breast height, greater than three (3) inches, regardless of total height.

(16) “Navigable waters” means waters of the United States, including the territorial seas.

(17) “Open water” means a wetland where at least part of the surface area is permanently covered with water.

(18) “Practicable alternative” means a way of configuring a project that is available and capable of being done after taking into consideration the following overall project purposes:

(A) Cost.

(B) Existing technology.

(C) Logistics.

(19) “Preservation” means the maintenance of a wetland to insure that designated and existing uses are protected from anthropogenic activities.

(20) “Rehabilitation” means the remediation of factors causing degradation of existing and designated uses of a wetland.

(21) “Scrub-shrub wetland” means a wetland dominated by woody vegetation having a height greater than three and two-tenths (3.2) feet and a stem diameter less than three (3) inches. This includes true shrubs, young trees, and trees or shrubs stunted by environmental conditions.

(22) “Secondary impacts” means impacts on waters of the state that are associated with a discharge but do not result from the actual discharge.

(23) “Tier I wetland” means a wetland classified according to 327 IAC 2-1.8-4.

(24) “Tier II wetland” means a wetland classified according to 327 IAC 2-1.8-4.

(25) “Water dependent” means a project that produces a discharge and requires access to, proximity to, or siting within a water body in order to fulfill the basic purpose of the project.

(26) “Water quality certification” means a section 401 water quality certification issued by the Indiana department of environmental management.

(27) “Waters of the United States” means those waters as defined in 40 CFR § 328.

(28) “Waters” or “waters of the state” has the meaning set forth in IC 13-11-2-265.

(29) “Watershed” means a geographic region within which water drains into a particular river, stream, or other body of water.

(30) “Wetland” means an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

*(Water Pollution Control Board; 327 IAC 17-1-4)*

## **Rule 2. Application and Notice**

### **327 IAC 17-2-1 Application requirements**

**Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2**

**Affected: IC 13-18-3; IC 13-18-4**

**Sec. 1. (a) An application for a water quality certification must be submitted to and approved by the commissioner in advance of commencement of the project and must:**

- (1) be on a form approved by the commissioner;**
- (2) be complete;**
- (3) be legible;**
- (4) contain the signed statement required by subsection (b);**
- (5) be signed by the applicant;**
- (6) include a wetland delineation performed in accordance with procedures established by the Corps of Engineers according to the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1 (January, 1987)\*, depicting all wetlands on the subject property;**
- (7) provide a list of names and addresses of landowners adjacent to the proposed project; and**
- (8) provide an alternatives analysis required by 327 IAC 17-3-4(c) and 327 IAC 17-3-5(c).**

**(b) An application required by subsection (a) must contain the following statement, signed by the applicant: “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”**

**(c) If the applicant is a corporation, or otherwise not an individual, the application must contain the name of the individual who shall be primarily responsible for the project that is to be certified.**

**(d) If the department determines that more information is necessary in order to accomplish the review of the application for a water quality certification, it shall promptly notify the applicant and request such information. The application is not considered complete until the applicant has submitted the requested information.**

**(e) The department shall act upon an application for a water quality certification within one (1) year of the receipt of a complete application. If the department fails to act within one (1) year, then the water quality certification shall be deemed waived, unless the federal permitting agency, in its discretion, accepts the water quality certification after such time period has passed.**

**(f) The applicant has the burden of proving that its project will comply with the applicable provisions of the federal Clean Water Act and state law.**



**\*The Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1 is incorporated by reference. Copies of this manual may be obtained from the U.S. Army Engineer Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46206. (Water Pollution Control Board; 327 IAC 17-2-1)**

**327 IAC 17-2-2 Public notice of a water quality certification application**

**Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2**

**Affected: IC 13-18-3; IC 13-18-4**

**Sec. 2. (a) Except as provided in subsection (g), the commissioner shall provide public notice of and an opportunity to comment on applications submitted to the department for water quality certification.**

**(b) The public notice must contain the following information:**

- (1) The applicable statutory and regulatory authority.**
- (2) The name and address of the applicant and, if any, the applicant's agent.**
- (3) The name, address, and telephone number of the department's employee who may be contacted concerning the application.**
- (4) The location of the proposed project.**
- (5) A brief description of the proposed project, including the following:**
  - (A) Its purpose and intended use.**
  - (B) A description of any structures that are to be erected.**
  - (C) The type, composition, and quantity of materials to be disposed of or discharged.**
  - (D) Possible impacts to wetlands, streams, or other waters of the state.**
  - (E) A description of any compensatory mitigation proposed by the applicant.**
- (6) A statement telling where the public may view or obtain a copy of the plan and elevation drawing, if reproducible, showing the general and specific site location.**
- (7) A statement that the comment period deadline is twenty-one (21) calendar days from the date of mailing of the public notice, unless otherwise specified.**
- (8) A statement that any person may request in writing that a public hearing or meeting be held to consider the application.**

**(c) The department shall provide notice of an application for a water quality certification to the following:**

- (1) The applicant.**
- (2) Landowners adjacent to the proposed project, as provided by the applicant under section 1(a)(7) of this rule.**
- (3) The following agencies:**
  - (A) the department of natural resources.**
  - (B) United States Environmental Protection Agency.**
  - (C) United States Fish and Wildlife Service.**
  - (D) Any state or federal agency responsible for issuing water quality**

certification in any other state whose water quality may be adversely affected by a proposed project.

(4) Any person who requests copies of public notices of water quality certification applicants.

(d) The department shall consider comments received during the public comment period and may forward comments received, via certified mail within five (5) working days after the close of the comment period, to the applicant for a response. The applicant shall provide the department with a written response to the comments, within fourteen (14) days of receipt of the comments, with the following exceptions:

(1) If an applicant requires additional time to respond to comments, the applicant shall inform the department in writing within the fourteen (14) day response time period.

(2) The department may place an application on hold for a time period agreed upon with the applicant requesting additional time.

If an applicant fails to provide a written response to comments received, the department may deny the application.

(e) The department shall issue a supplemental public notice of an application in the event of one (1) of the following:

(1) The proposed project originally was denied a water quality certification, but the applicant has submitted a new or modified proposal.

(2) The proposed project has significantly changed since the application was originally public noticed, and the department received comments from the public on the project as originally proposed.

(3) A request for modification of a water quality certification is made according to Rule 5 of this article.

(f) The department shall issue a supplemental public notice of an application for a project that has been significantly changed since the issuance of the first public notice that resulted in the receipt of no public comment on the project as originally proposed.

(g) A joint public notice shall be issued by the department and the Corps of Engineers, utilizing the public notice procedures set forth in 33 CFR § 325.3, if an application for a water quality certification requires a Corps individual permit. (*Water Pollution Control Board; 327 IAC 17-2-2*)

### **327 IAC 17-2-3 Procedures for notification to adjacent states**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-2; IC 13-18-3-3

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 3. (a)** If the department determines that a proposed project may adversely affect the quality of the waters of another state, the department shall notify the following about the receipt of the application:

(1) The Administrator.

**(2) The certifying agency in any state whose water quality may be affected.**

**(b) In addition to rights granted to a state under section 401(a)(2) of the Clean Water Act, a state whose water quality may be affected shall be granted sixty (60) days after receipt of notification, provided according to subsection (a)(2), to respond to the department, to provide comments and specify objections to the application. (*Water Pollution Control Board; 327 IAC 17-2-3*)**

**327 IAC 17-2-4 Public hearing or meeting**

**Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2**

**Affected: IC 13-18-3; IC 13-18-4**

**Sec. 4. (a) A person may request in writing that a public hearing or meeting be held to consider issues related to water quality in connection with a specific application for water quality certification. The request must state the reason for requesting the public hearing or meeting as specifically as possible.**

**(b) The department may hold a public hearing or public meeting if:**

- (1) substantial questions about the project are raised during the comment period;**
- (2) new information is obtained about water quality issues; or**
- (3) significant interest is expressed in the project.**

**(c) The department shall publish, in a daily or weekly newspaper in general circulation throughout the area affected by the discharge, a public notice of a scheduled public hearing or meeting setting forth the date, time, and place. The department shall notify landowners specified under section (a)(7) of this rule of the public hearing or meeting. The department shall locate the public hearing or meeting in the vicinity of the proposed project.**

**(d) The department shall encourage an applicant to attend a public hearing or meeting held concerning the applicant's proposed project.**

**(e) Any person may appear at a public hearing or meeting and present oral or written comments concerning the proposed project.**

**(f) The department shall consider comments received at the public hearing or meeting before a decision may be rendered on the application.**

**(g) A public hearing shall be recorded and a transcript prepared. A copy of the transcript must be available for purchase from the department or the transcriber of the public hearing and be available for public inspection during normal business hours at the department. A public meeting will not be recorded. (*Water Pollution Control Board; 327 IAC 17-2-4*)**

### **Rule 3. Review of Water Quality Certification Applications**

#### **327 IAC 17-3-1 Assessment of wetland existing and designated uses**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 1.** Uses set forth at 327 IAC 2-1.8-3 are presumed to exist in a wetland. (*Water Pollution Control Board; 327 IAC 17-3-1*)

#### **327 IAC 17-3-2 Assessment of impacts on water quality**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 2. (a)** An applicant shall consider all alternatives that would avoid impacts to a wetland or other waters of the state, regardless of the size, location, or type of project.

**(b)** The department shall:

**(1)** evaluate the alternatives for avoidance for each project and may require an applicant to consider additional options for avoiding impacts to the waters of the state; and

**(2)** review a water quality certification application to determine if the proposed project is water dependent.

(*Water Pollution Control Board; 327 IAC 17-3-2*)

#### **327 IAC 17-3-3 Water dependent projects impacting a Tier I wetland or other waters of the state**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 3. (a)** The following requirements apply to a water dependent project that will involve impacts to a Tier 1 wetland or other waters of the state:

**(1)** The applicant shall demonstrate that all reasonable and appropriate steps have been taken to minimize potential adverse impacts on wetlands or other waters of the state.

**(2)** The department shall consider the following factors to determine if potential impacts to the aquatic ecosystem have been minimized to the greatest extent:

**(A)** Spatial requirements of the project.

**(B)** Location of existing structural or natural features that may dictate the placement or configuration of the project.

**(C)** The purpose of the project and how the purpose relates to placement, configuration, or density.

**(D)** The spatial distribution of wetlands or other waters on the site.

**(E)** Individual, secondary, and cumulative impacts.

**(F)** An applicant's efforts to:

**(i)** modify the size, scope, configuration, or density of the project;

- (ii) remove or accommodate site constraints including zoning, infrastructure, access, or natural features; and
- (iii) otherwise minimize impacts.

(b) If the department finds that an applicant has not complied with the requirements of subsection (a), the department shall deny certification for the proposed project.

(c) Any impact to a wetland or other waters remaining after the applicant has minimized impacts to the greatest extent possible shall be compensated according to 327 IAC 17-4. (*Water Pollution Control Board; 327 IAC 17-3-3*)

**327 IAC 17-3-4 Non-water dependent projects impacting Tier I wetlands or other waters of the state**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 4. (a)** The following requirements apply to a non-water dependent project that will involve impacts to a Tier I wetland or other waters of the state:

- (1) Practicable alternatives are presumed to exist unless the applicant demonstrates otherwise.
- (2) The department shall not grant certification if there is a practicable alternative to the proposed discharge that would have less impact on a wetland or other waters of the state.

(b) An applicant shall analyze and consider all alternatives to the design of a proposed project that would avoid impacts to a wetland or other waters of the state. The alternatives analysis must include the following:

- (1) A no-impact alternative that would entirely avoid impacts to a wetland and other waters of the state.
- (2) Alternative sites or locations in the region where the project could be conducted, including the location of the alternative site, the owner, and the cost of acquiring the property.
- (3) Alternative project configurations or designs on the proposed project site.
- (4) Specific information explaining why each alternative or alternative site or location was rejected.

Compensatory mitigation shall not be considered an alternative in the analysis conducted according to this subsection.

(c) The applicant shall submit the alternatives analysis to the department as a part of the application according to 327 IAC 17-2-1(a)(8).

(d) The department may require an applicant to analyze additional alternatives.

(e) The department shall consider the following factors to determine whether

**practical alternatives to avoid impacts are applicable:**

- (1) The basic project purpose and whether it could be reasonably accomplished using one (1) or more other sites in the region that would avoid wetland impacts.**
- (2) The exclusion of an alternate site from consideration because it includes or requires an area not owned by the applicant, though that area could reasonably be obtained, used, expanded, or managed to fulfill the basic purpose of the proposed project.**
- (3) The general suitability of the alternate sites considered by the applicant.**
- (4) The ability to reasonably modify the size, scope, configuration, or density of the project to avoid impacts to a wetland.**
- (5) Efforts by the applicant, including requests for conditional use permits, variances, or planned unit developments, to accommodate or remove constraints imposed on alternatives by zoning standards or infrastructure.**

**(f) If the department determines there are no practicable alternatives that will avoid impacts on a Tier I wetland or other waters of the state, then the applicant shall demonstrate that all reasonable and appropriate steps have been taken in the project design to minimize potential impacts on a wetland or other waters of the state before a water quality certification shall be issued. The department shall consider the following factors to determine if all reasonable and appropriate steps have been taken:**

- (1) Spatial requirements of the project.**
- (2) Location of existing structural or natural features that may dictate the placement or configuration of the project.**
- (3) The purpose of the project and how the purpose relates to placement, configuration, or density.**
- (4) The spatial distribution of wetlands or other waters on the site.**
- (5) Individual, secondary, and cumulative impacts.**
- (6) An applicant's efforts to:**
  - (A) modify the size, scope, configuration, or density of the project;**
  - (B) remove or accommodate site constraints including zoning, infrastructure, access, or natural features; and**
  - (C) otherwise minimize impacts.**

**(g) If the department finds that an applicant has not complied with the requirements of subsection (f), the department shall deny certification for the proposed project.**

**(h) Any impact to a wetland or other waters remaining after the applicant has minimized impacts to the greatest extent possible must be compensated according to 327 IAC 17-4. (*Water Pollution Control Board; 327 IAC 17-3-4*)**

### **327 IAC 17-3-5 Impacts to Tier II wetlands**

**Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2**

**Affected: IC 13-18-3; IC 13-18-4**

**Sec. 5. (a) The following requirements apply to a project that will involve impacts to a Tier II wetland:**

**(1) Practicable alternatives are presumed to exist unless the applicant demonstrates otherwise.**

**(2) The department shall not grant certification if there is a practicable alternative to the proposed discharge that would have less impact on a wetland or other waters of the state.**

**(b) An applicant shall analyze and consider all alternatives to the design of a proposed project that would avoid impacts to a wetland or other waters of the state. The alternatives analysis must include the following:**

**(1) A no-impact alternative that would entirely avoid impacts to a wetland and other waters of the state.**

**(2) Alternative sites or locations in the region where the project could be conducted, including the location of the alternative site, the owner, and the cost of acquiring the property.**

**(3) Alternative project configurations or designs on the proposed project site.**

**(4) Specific information explaining why each alternative or alternative site or location was rejected.**

**Compensatory mitigation shall not be considered an alternative in the analysis conducted according to this subsection.**

**(c) The applicant shall submit the alternatives analysis to the department as a part of the application according to 327 IAC 17-2-1(a)(8).**

**(d) The department may require an applicant to analyze additional alternatives.**

**(e) The department shall consider the following factors to determine whether practical alternatives to avoid impacts are applicable:**

**(1) The basic project purpose and whether it could be reasonably accomplished using one (1) or more other sites in the region that would avoid wetland impacts.**

**(2) The exclusion of an alternate site from consideration because it includes or requires an area not owned by the applicant, though that area could reasonably be obtained, used, expanded, or managed to fulfill the basic purpose of the proposed project.**

**(3) The general suitability of the alternate sites considered by the applicant.**

**(4) The ability to reasonably modify the size, scope, configuration, or density of the project to avoid impacts to a wetland.**

**(5) Efforts by the applicant, including requests for conditional use permits, variances, or planned unit developments, to accommodate or remove constraints imposed on alternatives by zoning standards or infrastructure.**

**(f) If the department determines there are no practicable alternatives that will avoid impacts on a Tier II wetland or other waters of the state, then the applicant shall demonstrate that all reasonable and appropriate steps have been taken in the project**

design to minimize potential impacts on a wetland or other waters of the state before a water quality certification shall be issued. The department shall consider the following factors to determine if all reasonable and appropriate steps have been taken:

- (1) Spatial requirements of the project.
- (2) Location of existing structural or natural features that may dictate the placement or configuration of the project.
- (3) The purpose of the project and how the purpose relates to placement, configuration, or density.
- (4) The spatial distribution of wetlands or other waters on the site.
- (5) Individual, secondary, and cumulative impacts.
- (6) An applicant's efforts to:
  - (A) modify the size, scope, configuration, or density of the project;
  - (B) remove or accommodate site constraints including zoning, infrastructure, access, or natural features; and
  - (C) otherwise minimize impacts.

(g) If the department finds that an applicant has not complied with the requirements of subsection (f), the department shall deny certification for the proposed project.

(h) If the applicant has demonstrated that there is no practicable alternative and there will still be impacts to a Tier II wetland, then the applicant shall prepare and submit to the department an antidegradation demonstration in accordance with 327 IAC 2-1.8-5. The applicant shall submit the demonstration within forty-five (45) days of receipt of notification from the department that the project will impact a Tier II wetland. Except as provided in subsection (i), the antidegradation demonstration must include the following:

- (1) An evaluation of the baseline economic condition of the county where the project is proposed to be located, including the county's:
  - (A) unemployment rate;
  - (B) population;
  - (C) average household income relative to state and national averages; and
  - (D) the percent of the population living below the poverty level.
- (2) Information on the anticipated impacts attributable to the proposed project in the county where the project will be located, including:
  - (A) the change in employment or avoidance of a reduction in employment;
  - (B) the reduction in the local unemployment rate attributable to the proposed project;
  - (C) the total, annual, new payroll of resident non-officers for the new or increased employment and the average wages for the new non-officer employees or, in lieu of this information, the applicant may provide other information that quantifies the extent of the economic benefit to be provided to the area;
  - (D) the change in net tax revenues;
  - (E) the change in production level, if applicable;
  - (F) the change in efficiency, if applicable; and



(G) the extent of correction of an environmental or public health problem.  
(3) An identification of the potential environmental and public health impacts attributable to the proposed project, including the potential impact on the following:

- (A) The aquatic community.
- (B) Endangered or threatened species.
- (C) Characteristics of the wetland that are unique or rare within the locality or state.
- (D) Ground water recharge.
- (E) Drinking water supplies.
- (F) Recreation and aesthetics.
- (G) Scientific research.
- (H) Shoreline or stream bank erosion protection.
- (I) Natural or regional storm water detention or retention.

(i) An applicant may provide:

- (1) an explanation as to why information required by subsection (h) is not necessary or appropriate for inclusion in the antidegradation demonstration; and
- (2) additional information that the applicant deems relevant to the demonstration.

(j) If the department determines an antidegradation demonstration is incomplete, the department shall notify the applicant and specify additional information that is necessary to make the demonstration complete. The applicant shall supply the information to the department within forty-five (45) days of the request. The department shall deny the application if the applicant fails to provide the additional information in the time required, unless the department grants additional time to respond for good cause.

(k) Upon receipt of a complete antidegradation demonstration, the department shall provide public notice, request comment, and if requested, schedule and hold a public meeting on the demonstration.

(l) After the receipt of a complete antidegradation demonstration, the department shall specify in writing any additional relevant information that it deems necessary to make a determination on the demonstration. Failure of an applicant to submit any additional information requested by the department within forty-five (45) days of receipt of the department's request shall result in the denial of the application, unless the department grants additional time to respond for good cause.

(m) The department shall approve an antidegradation demonstration only if it determines that the proposed project would support important social and economic development in the area and would not result in an unacceptable environmental impact.  
(*Water Pollution Control Board; 327 IAC 17-3-5*)

### **327 IAC 17-3-6 Impacts to outstanding state resource waters and outstanding national resource waters**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2  
**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 6.** The department shall ensure that no degradation of an outstanding state resource water (OSRW) or outstanding national resource water (ONRW) will occur.

**Degradation to these waters is prohibited unless the following conditions are met:**

- (1)** The impact will last less than twelve (12) months.
- (2)** The person intending to cause the impact receives water quality certification for the impact.
- (3)** The applicant minimizes and justifies the short term, temporary impact to the satisfaction of the commissioner.
- (4)** The applicant demonstrates to the commissioner that no practicable alternative exists to avoid the impact using the criteria set forth in section 5 of this rule.

*(Water Pollution Control Board; 327 IAC 17-3-6)*

**327 IAC 17-3-7 Review of Corps general permits**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2  
**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 7. (a)** If the department determines a proposed Corps general permit may cause or contribute to significant impact to waters of the state, the department may:

- (1)** propose modifications or revisions to the Corps general permit to prevent significant impact to waters of the state;
- (2)** condition a water quality certification issued for the Corps general permit to prevent significant impact to waters of the state; or
- (3)** deny water quality certification for the proposed Corps general permit that would not prevent or could not be conditioned to prevent significant impact to waters of the state.

**(b)** A water quality certification granted by the department for a Corps general permit shall prohibit the Corps of Engineers from issuing a general permit in the following:

- (1)** A Tier II wetland.
- (2)** An outstanding state resource water.
- (3)** An outstanding national resource water.
- (4)** A water of special concern as listed in the water quality certification.

**(c)** The department shall provide public notice according to 327 IAC 17-2-2 when considering an application for water quality certification for a Corps general permit.

*(Water Pollution Control Board; 327 IAC 17-3-7)*

**Rule 4. Compensatory Mitigation of Water Quality Impacts**

**327 IAC 17-4-1 Compensatory mitigation required for projects impacting a Tier I wetland**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

**Affected: IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5**

**Sec. 1. (a) If compensatory mitigation is required, adversely affected existing or designated uses of a wetland proposed to be impacted must be replaced through compensatory mitigation as approved by the department according to the conditions of the water quality certification issued to the applicant.**

**(b) The department shall require the applicant to provide compensatory mitigation for a project that has an impact affecting more than one-tenth (0.1) acre of wetland.**

**(c) An applicant shall provide compensatory mitigation for a project that will impact one-tenth (0.1) acre or less of a Tier I wetland and will have a significant impact on water quality as determined by the department according to the following factors:**

**(1) The project's requirement to maintain, repair, or rehabilitate existing, man-made structures, excluding drainage ditches.**

**(2) The secondary and cumulative impacts of the project.**

**(3) The proximity and hydrologic connection of the wetland proposed to be impacted to other water bodies.**

**(4) The duration of the activity associated with the project.**

**(5) The plant species diversity and fish and wildlife habitat components of the wetland to be impacted.**

**(6) The project's intent to control, abate, or correct an environmental problem or threat to the environment, including a response action pursuant to one (1) of the following:**

**(A) The Comprehensive Environmental Response, Compensation, and Liability Act according to 42 U.S.C. 9601\*.**

**(B) A corrective action pursuant to the Resource Conservation Recovery Act according to 42 U.S.C. 6901\*\*.**

**(C) An underground storage tank corrective action under IC 13-23-13.**

**(D) A remediation of petroleum releases under IC 13-24-1.**

**(E) A voluntary remediation under IC 13-25-5.**

**(F) An abatement or correction of any polluted condition under IC 13-18-7.**

**\*42 U.S.C. 9601 is incorporated by reference. Copies of this law may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46206.**

**\*\*42 U.S.C. 6901 is incorporated by reference. Copies of this law may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 17-4-1*)**

**327 IAC 17-4-2 Compensatory mitigation required for projects impacting a Tier II wetland**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 2. Before an impact shall be allowed to occur to a Tier II wetland, an applicant must complete the following to the satisfaction of the department:**

- (1) Fully complete compensatory mitigation that is demonstrated to be successful in having replaced existing and designated uses that are intended to be impacted by the project in the Tier II wetland.**
- (2) Provide written notice to the department of the successful completion of the compensatory mitigation required according to subdivision (1).**
- (3) Receive the department's approval of the compensatory mitigation before initiating any impact to the Tier II wetland.**

*(Water Pollution Control Board; 327 IAC 17-4-2)*

**327 IAC 17-4-3 Compensatory mitigation required for an impact to other waters of the state**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5

**Sec. 3. (a) If compensatory mitigation is required, existing or designated uses of the water that will be adversely affected by a proposed impact and is not a Tier I or Tier II wetland, must be replaced through compensatory mitigation as approved by the department according to the conditions of the water quality certification issued to the applicant.**

**(b) The department shall require an applicant to provide compensatory mitigation for a project that the department determines will have a significant impact on water quality according to subsection (c) or involves one (1) or more of the following:**

- (1) Relocation of any stream, river, or ditch channel.**
- (2) Shaping or other alteration of more than three hundred (300) linear feet of a bank of a stream, river, or ditch.**
- (3) Conversion of a stream, river, or ditch channel into a closed pipe, hardened ditch, or other such water conveyance structure.**
- (4) Filling or conversion of more than one-tenth (0.10) acre of an open water area.**

**(c) The department shall consider the following factors to determine if a project will have a significant impact on water quality:**

- (1) The project's requirement to maintain, repair, or rehabilitate existing, man-made structures, excluding drainage ditches.**
- (2) The secondary and cumulative impacts of the project.**
- (3) The proximity and hydrologic connection of the water body proposed to be impacted to other water bodies.**
- (4) The duration of the activity associated with the project.**

(5) The plant species diversity and fish and wildlife habitat components of the water to be impacted.

(6) The project's intent to control, abate, or correct an environmental problem or threat to the environment, including a response action pursuant to one (1) of the following:

(A) The Comprehensive Environmental Response, Compensation, and Liability Act according to 42 U.S.C. 9601\*.

(B) A corrective action pursuant to the Resource Conservation Recovery Act according to 42 U.S.C. 6901\*\*.

(C) An underground storage tank corrective action under IC 13-23-13.

(D) A remediation of petroleum releases under IC 13-24-1.

(E) A voluntary remediation under IC 13-25-5.

(F) An abatement or correction of any polluted condition under IC 13-18-7.

(d) A project involving the relocation, realignment, or channelization of an existing stream is presumed to have a significant impact on water quality unless an applicant demonstrates otherwise.

**\*42 U.S.C. 9601 is incorporated by reference. Copies of this law may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46206.**

**\*\*42 U.S.C. 6901 is incorporated by reference. Copies of this law may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 17-4-3*)**

#### **327 IAC 17-4-4 Time for performing compensatory mitigation**

**Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2**

**Affected: IC 13-18-3; IC 13-18-4**

**Sec. 4. (a) Compensatory mitigation must be demonstrated to be successful before a proposed impact will be allowed to be initiated upon a wetland where the applicant does not guarantee compensatory mitigation with a performance bond or irrevocable letter of credit as specified in section 8(a)(2) of this rule.**

**(b) In situations, other than described by subsection (a), where compensatory mitigation is approved by the department, it must be completed within one (1) year of the date of issuance of the water quality certification unless a written extension is granted by the commissioner. (*Water Pollution Control Board; 327 IAC 17-4-4*)**

#### **327 IAC 17-4-5 Location of compensatory mitigation**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2  
**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 5. (a)** Compensatory mitigation of impacts to waters of the state must occur, if practicable, on the same site as the project and its associated impacts.

**(b)** The department may authorize offsite compensatory mitigation if it determines that onsite compensatory mitigation has a low probability of success. One (1) of the following shall be met before offsite compensatory mitigation may be authorized:

**(1)** Offsite compensatory mitigation using a mitigation bank must occur in the mitigation bank's service area as stipulated in the mitigation bank's charter.

**(2)** Offsite compensatory mitigation not using a mitigation bank shall, to the greatest extent possible, be located within the same fourteen (14) digit United States Geological Survey Hydrologic Unit Code (USGS HUC) as the impact site.

**(c)** If offsite compensatory mitigation under subsection (b)(2) is not practicable, offsite compensatory mitigation must be located according to the following:

**(1)** Compensatory mitigation for an impact to a Tier I wetland shall be provided in accordance with the following:

**(A)** If the impact is less than or equal to twenty-five hundredths (0.25) acre, compensatory mitigation shall be provided within the same USGS HUC eight (8) digit watershed as the project impact.

**(B)** If the impact is greater than twenty-five hundredths (0.25) acre:

**(i)** compensatory mitigation shall be provided within the same USGS HUC eleven (11) digit watershed as the project impact; or

**(ii)** if a better compensatory mitigation option can be identified within the eight (8) digit watershed, then approval may be granted at the discretion of the department upon written request from the applicant.

**(2)** Compensatory mitigation for an impact to a Tier II wetland shall be provided, regardless of size, within the same USGS HUC fourteen (14) digit watershed as the project impact.

**(d)** The department shall deny certification for a proposed project if a compensatory mitigation site cannot be located in compliance with this section. (*Water Pollution Control Board; 327 IAC 17-4-5*)

#### **327 IAC 17-4-6 Protection of a compensatory mitigation site**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4; IC 32-1-2; IC 32-5-2.6

**Sec. 6. (a)** A compensatory mitigation site must be protected in perpetuity through one (1) of the following methods:

**(1)** A conservation easement held by a third party committed to conservation and maintenance of the property and its wetland existing and designated uses.

**(2)** A deed restriction that legally binds the property owner to maintain the

property's wetland existing and designated uses.

(b) A conservation easement or deed restriction required by subsection (a) must be submitted to the department within ninety (90) days of the date of issuance of the water quality certification.

(c) After the department notifies an applicant that the applicant's compensatory mitigation site is successful and the water quality certification is issued, the recipient may transfer responsibility for the perpetual maintenance of the compensatory mitigation site in accordance with the following:

(1) The recipient of the water quality certification shall notify the department no less than sixty (60) days in advance of the proposed transfer date.

(2) The recipient of the water quality certification shall submit to the department a written agreement between the recipient and the transferee. The agreement must contain:

(A) a specific date for transfer of responsibility;

(B) an acknowledgment that the water quality certification recipient is liable for violations or mitigation failures up to the date of transfer; and

(C) an acknowledgment that the transferee is responsible for maintaining the compensatory mitigation site as a wetland in perpetuity and is liable for violations or mitigation failures from the date of transfer and into the future.

The department may approve the transfer within sixty (60) days of receipt of the notice and agreement required by subdivisions (1) and (2). If approved, the department shall modify the water quality certification to reflect the transfer. (*Water Pollution Control Board; 327 IAC 17-4-6*)

### **327 IAC 17-4-7 Compensatory mitigation ratios**

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-3; IC 13-18-4

**Sec. 7. (a) Each type of wetland, listed in Table 7(a), proposed to be impacted must be compensated by a ratio of compensatory mitigation established in the following table:**

<b>Table 7(a)</b> <b>Compensatory mitigation ratios</b>	
<b>Type of wetland proposed to be impacted</b>	<b>Compensatory mitigation : impacted wetland ratio</b>
<b>Open water/emergent</b>	<b>2:1</b>
<b>Scrub/shrub</b>	<b>3:1</b>
<b>Forested</b>	<b>4:1</b>
<b>Tier II Wetlands</b>	<b>1:1</b>

Farmed wetlands	1:1
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(b) A compensatory mitigation ratio required by Table 7(a) may be reduced by the department by an amount specified in the following circumstances:

(1) Except as provided in subdivision (2) or (3), an applicant proposing to replace a wetland, that the department determines is significantly degraded or adversely altered by human activities, with a wetland of the same type supporting more uses and greater diversity of vegetation, may have the compensatory mitigation ratio requirement lowered by up to five-tenths (0.5) for each wetland type, except a Tier II wetland and a farmed wetland.

(2) If an applicant completes mitigation prior to initiation of an impact and the compensatory mitigation is demonstrated to the department to be successful in replicating the uses and type of the wetland proposed to be impacted, then a ratio may be lowered to 1:1 for the affected wetland type.

(3) An applicant that proposes wetland preservation, wetland rehabilitation, or a combination of both may receive a lowering of the compensatory mitigation component of the ratio, at the discretion of the department, by up to one (1.0) for a wetland type, other than a Tier II wetland, if the following terms are met:

(A) A net loss of wetland acreage shall be prevented by providing a minimum acreage of wetland restoration, creation, or both that is equal to the acreage of impact.

(B) The area to be preserved meets the qualifications for Tier II classification or greater.

(C) The secondary and cumulative impacts resulting from the impact of the project are insignificant.

In no event shall a mitigation ratio be reduced below 1:1. (*Water Pollution Control Board; 327 IAC 17-4-7*)

#### **327 IAC 17-4-8 Financial responsibility concerning compensatory mitigation**

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-3; IC 13-18-4

Sec. 8. (a) The success of compensatory mitigation for a Tier I wetland, under section 1 of this rule, or waters other than wetlands, under section 3 of this rule, must be guaranteed by an applicant according to one (1) of the following means:

(1) Successful completion of the compensatory mitigation, with written confirmation of the successful completion received from the department, prior to initiation of an impact to the wetland proposed to be impacted.

(2) Posting of a performance bond or an irrevocable letter of credit, prior to the issuance of the water quality certification, that covers the following:

(A) Costs of:

(i) constructing and monitoring; and

(ii) other costs associated;

with the successful completion of the compensatory mitigation wetland.



**(B) Outstanding liens on the property.**

**(b) The department shall release an applicant from the financial assurance required by subsection (a)(2) when:**

- (1) the compensatory mitigation has achieved all success criteria required by section 15 of this rule for at least two (2) consecutive years; and**
- (2) the department has inspected the compensatory mitigation site, determined it to be successful, and provided the applicant with written confirmation of the success status.**

*(Water Pollution Control Board; 327 IAC 17-4-8)*

**327 IAC 17-4-9 Storm water control requirements**

**Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2**

**Affected: IC 13-18-3; IC 13-18-4**

**Sec 9. If an impact to a Tier I or Tier II wetland is authorized by the department, the following storm water control requirements shall be met by the applicant:**

- (1) Appropriate storm water control measures must be installed to ensure that the peak post-development rate of surface water runoff, based on a ten (10) year, twenty-four (24) hour storm, as defined according to 327 IAC 15-7-2(1), from the impacted wetland does not exceed the peak pre-development rate of runoff, based on a ten (10) year, twenty-four (24) hour storm, as defined according to 327 IAC 15-7-2(1), from the impacted wetland.**
- (2) Water quality improvement measures must be incorporated into the design of the storm water control measures to the maximum extent practicable and may include one (1) or more of the following:**

**(A) Oil and grease skimmers.**

**(B) Vegetative buffer strips.**

*(Water Pollution Control Board; 327 IAC 17-4-9)*

**327 IAC 17-4-10 Compensatory wetland mitigation bank usage**

**Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2**

**Affected: IC 13-18-3; IC 13-18-4**

**Sec. 10. The department shall allow utilization of a mitigation bank if the following are met:**

- (1) The mitigation bank has been approved by the department.**
- (2) The department approves the use of the mitigation bank for the applicant's required compensatory mitigation.**
- (3) The department determines that the compensatory mitigation produced at the bank will compensate for the existing and designated uses lost at the proposed wetland impact site.**
- (4) An impact being mitigated through the use of a mitigation bank must occur in the mitigation bank's service area as stipulated in the mitigation bank's charter.**

*(Water Pollution Control Board; 327 IAC 17-4-10)*

**327 IAC 17-4-11 Documentation required for wetland compensatory mitigation plan**  
**Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2**  
**Affected: IC 13-18-3; IC 13-18-4**

**Sec. 11. (a) A wetland compensatory mitigation plan must be:**

- (1) submitted by the applicant if wetland compensatory mitigation is required; and**
- (2) approved by the department prior to the issuance of a water quality certification.**

**(b) A wetland compensatory mitigation plan shall, at a minimum, give details of the following:**

- (1) Existing conditions at the wetland to be impacted, including the following:**
  - (A) Hydrology.**
  - (B) Type of vegetation, including the presence of exotic invasive species.**
  - (C) Current land use of the project site.**
  - (D) Surrounding land use.**
  - (E) Soils.**
  - (F) Topography.**
- (2) Acreage and type of wetlands proposed to be impacted.**
- (3) Acreage and type of proposed wetland compensatory mitigation.**
- (4) Description of compensatory mitigation goals and success criteria.**
- (5) Description of compensatory mitigation methods.**
- (6) Planting lists.**
- (7) Narrative describing the following:**
  - (A) Planned hydrology, including the following:**
    - (i) Methods and data used to estimate the planned hydrology.**
    - (ii) Planned seasonal high water elevation and depth.**
    - (iii) Planned mean water elevation and depth.**
    - (iv) Planned duration of saturation, inundation, or both.**
  - (B) Planned vegetation communities developed by using “Classification of Wetlands and Deepwater Habitats of the United States”, U. S. Fish and Wildlife Service, Office of Biological Services, FWS/OBS-79/31, (December 1979)\*, to list the wetland community types to be constructed.**
- (8) Drawings, plans, photographs, and maps depicting the planned post-construction grades, water levels, and plant communities of the compensatory mitigation, including the following:**
  - (A) Detailed topographic drawings.**
  - (B) Cross sectional drawings, depicted in National Geodetic Vertical Datum, including the following:**
    - (i) Planned grade elevation.**
    - (ii) Water control elevation.**
    - (iii) Planned mean water elevation.**
    - (iv) Planned seasonal high water elevation.**
  - (C) Planting plan related directly to water depths.**
  - (D) Aerial photographs of the proposed impact site prior to construction.**

- (E) Aerial photographs of the proposed compensatory mitigation site prior to construction.
- (F) Map depicting the location of the proposed mitigation site relative to new construction or other existing landmarks.
- (G) Longitude and latitude of the center of each proposed compensatory mitigation site.

(c) The applicant shall submit a baseline report summarizing the following:

- (1) Conditions existing at the site prior to construction of the proposed project and compensatory mitigation.
- (2) The construction process.
- (3) Design features to be implemented to restore the aquatic habitat.

(d) The department may request additional information from the applicant if it is determined to be necessary.

**\*This document is incorporated by reference. Notwithstanding language to the contrary in the primarily incorporated documents, the versions of all secondarily incorporated documents, which are those documents referred to in the primarily incorporated documents, shall be the versions in effect on the date of final adoption of this rule. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 17-4-11*)**

#### **327 IAC 17-4-12 Review of wetland mitigation plans**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 12. A complete compensatory mitigation plan shall be reviewed by the department and approved only if the department determines that:**

- (1) the existing and designated uses lost by impacting an existing wetland will be adequately replaced by the compensatory mitigation; and
- (2) there is an overall probability of success of the compensatory mitigation, taking into consideration the following factors:
  - (A) The methods to be used to restore or create wetlands on a proposed compensatory mitigation site.
  - (B) The side slopes or other slopes affecting water levels on a proposed compensatory mitigation site.
  - (C) The proximity of a proposed compensatory mitigation site to other waters or natural areas.
  - (D) The presence of exotic plant species on a proposed compensatory mitigation site.
  - (E) The inclusion of a buffer zone around a proposed compensatory

mitigation site.

(F) The methods proposed to control hydrology on a proposed compensatory mitigation site.

(G) The land use adjacent to a proposed compensatory mitigation site.

(H) The methods proposed to establish vegetation on a proposed compensatory mitigation site.

(I) The proposed plan for long term management of a proposed compensatory mitigation site.

(J) The uses to be replaced.

(K) The success criteria to be met, as specified in section 15 of this rule.

*(Water Pollution Control Board; 327 IAC 17-4-12)*

**327 IAC 17-4-13 Documentation required for a wetland compensatory mitigation monitoring plan**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-14-1-13; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 13. (a)** A wetland compensatory mitigation monitoring plan must be approved by the department prior to the commencement of compensatory mitigation activities.

(b) Except as provided in subsection (e), a compensatory mitigation site shall be monitored until the department provides the applicant with a letter confirming that the success criteria stipulated in the water quality certification and in section 15 of this rule have been achieved for at least two (2) consecutive years.

(c) Vegetation monitoring must occur:

(1) for the first time at a particular site between June 1 and October 31; and

(2) annually within thirty (30) days of the anniversary date of the first monitoring event.

(d) An applicant shall be responsible for the monitoring necessary to determine when a compensatory mitigation site has achieved the success criteria. A monitoring plan must, at a minimum, provide the following:

(1) Description of the compensatory mitigation success criteria.

(2) Goals that must be met to achieve the criteria.

(3) Methods for evaluating the success of compensatory mitigation.

(4) Map of sample points.

(5) Monitoring schedule.

(6) Specific factors to be monitored, that may include the following:

(A) Vegetation sampling.

(B) Exotic species surveys.

(C) Growth rates for trees and shrubs.

(D) Planted species survival rates.

(E) Macroinvertebrate sampling.

(F) Amphibian sampling.

- (G) Wildlife surveys.
- (H) Ground water and hydrology monitoring.
- (I) Soils sampling.
- (J) Water quality sampling.
- (K) Delineation of the jurisdictional extent of wetlands on the site.
- (L) As built survey of boundaries, elevations of structures, and topography.

(e) If monitoring reports or inspection of the compensatory mitigation site reveals the presence of exotic or native nuisance species in excess of the limits listed in section 15 of this rule, the department shall extend the monitoring period required by subsection (b) to monitor the effectiveness of control measures and gauge the rate of infestation.

(f) The department may release an applicant from an extended monitoring period required by subsection (e) if one (1) of the following occurs:

- (1) The infestation of:
  - (A) exotic species is eliminated; and
  - (B) native nuisance species is reduced according to section 15(3) of this rule.
- (2) Sufficient funding is provided in a long term management trust to control the exotic and native nuisance species.

*(Water Pollution Control Board; 327 IAC 17-4-13)*

#### **327 IAC 17-4-14 Documentation required for a wetland monitoring report**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-14-1-13; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 14.** An applicant shall submit wetland monitoring reports to the department as required by the water quality certification. A monitoring report must, at a minimum, provide the following:

- (1) Water quality certification identification number.
- (2) Corps of Engineer identification number.
- (3) Project description.
- (4) Reprint of the monitoring plan.
- (5) Results of monitoring.
- (6) Report on the progress of the compensatory mitigation.
- (7) Photographic documentation.
- (8) Graphics depicting the development of plant communities and water levels that illustrate the progress of the compensatory mitigation over the monitoring period relative to the success criteria.
- (9) A post construction report that establishes baseline conditions at the compensatory mitigation site, including a summary of changes in hydrology and details of:
  - (A) final contours;
  - (B) wetland plantings; and
  - (C) seedings.

*(Water Pollution Control Board; 327 IAC 17-4-14)*

**327 IAC 17-4-15 Success criteria for a wetland compensatory mitigation site**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 15. A wetland compensatory mitigation site must meet the following minimum success criteria:**

**(1) Wetland areas of a compensatory mitigation site must meet the wetland jurisdictional requirements of the Corps of Engineers.**

**(2) The wetland plant communities are free of the following exotic species:**

**(A) Purple loosestrife (*Lythrum salicaria*).**

**(B) Common reed (*Phragmites australis*).**

**(C) Eurasian water milfoil (*Myriophyllum spicatum*).**

**(3) The combined aerial coverage of reed canary grass (*Phalaris arundinacea*) and the native, nuisance species, cattail (*Typha spp.*), shall not cover more than fifteen percent (15%) of a community type.**

**(4) No more than ten percent (10%) aerial coverage of the compensatory mitigation site may be:**

**(A) open water;**

**(B) bare ground, or**

**(C) a combination of clauses (A) and (B);**

**unless the applicant provides documentation in the mitigation plan that the natural wetlands the compensatory mitigation site is attempting to recreate have a larger open water or bare ground component or the impacted wetlands contained larger areas of open water or bare ground.**

**(5) Native, non-nuisance vegetation covers at least seventy percent (70%) of the compensatory mitigation site.**

**(6) The existing and designated uses lost at the impacted wetland are replaced.**

**(7) The success criteria set forth in the approved compensatory mitigation plan must be met.**

*(Water Pollution Control Board; 327 IAC 17-4-15)*

**327 IAC 17-4-16 Compensatory mitigation remediation for wetlands**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 16. (a) An applicant shall submit a compensatory mitigation remediation plan for wetlands to the department for approval within sixty (60) days of one (1) of the following:**

**(1) Inability of the compensatory mitigation site to achieve:**

**(A) the planned hydrology within two (2) growing seasons after completion of construction of the compensatory mitigation;**

**(B) the success criteria at least once within five (5) years of the completion of construction of the compensatory mitigation; or**

**(C) the success criteria for two (2) consecutive years within the first seven (7) years of monitoring.**

(2) Indication, from at least two (2) consecutive years of monitoring, that the compensatory mitigation site is not progressing toward achieving the success criteria required by section 15.

(b) A remediation plan must include the following:

(1) Identification of the problem or problems preventing the compensatory mitigation site from achieving the success criteria.

(2) A course of action, to eliminate the problem or problems, that may include one (1) or more of the following:

(A) Selection of an alternative compensatory mitigation site that is more suitable for the compensatory mitigation required.

(B) Replanting the compensatory mitigation site.

(C) Regrading the compensatory mitigation site.

(D) Construction of an upland buffer around the site.

(E) Herbicide treatment of exotic invasive vegetation and native, nuisance species

(c) The applicant shall initiate implementation of the remediation plan within one (1) calendar year of its approval by the department. (*Water Pollution Control Board; 327 IAC 17-4-16*)

**327 IAC 17-4-17 Documentation required for a compensatory mitigation plan for waters other than wetlands**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 17. (a)** A compensatory mitigation plan for waters other than wetlands must be:

(1) submitted by the applicant if required by the department; and

(2) approved by the department prior to the issuance of a water quality certification.

(b) A compensatory mitigation plan for waters other than wetlands must, at a minimum, provide the following:

(1) An assessment of the stream fisheries, water chemistry, flow regime, and riparian communities proposed to be impacted within the project area.

(2) An assessment of the in-stream habitat requirements of fish species that are noted in the stream assessment required under subdivision (1) and includes an analysis by species of the aspects of stream structure that impact and support the following:

(A) Foraging.

(B) Breeding.

(C) Nursery.

(D) Refuge areas.

(3) Details for the replacement of habitat types, including the following:

(A) Specifications for:

- (i) pools;
  - (ii) riffles; and
  - (iii) in-channel or stream bank habitat structures.
- (B) Construction plans with depictions of the locations of the structures specified under clause (A).
- (C) An explanation of the construction plans required by clause (B), including:
  - (i) the predicted success of the compensatory mitigation; and
  - (ii) detailed contingency plans if the mitigation proposed under item (i) fails.
- (D) A construction time schedule specifying the sequence of the construction of the following:
  - (i) The project.
  - (ii) The compensatory mitigation.
- (4) The establishment of sampling points upstream and downstream of a modified channel. The latitude and longitude coordinates of the sampling points shall be denoted on plan overview sheets and on aerial photos.
- (5) A description of the compensatory mitigation success criteria described in section 15 of this rule.
- (c) An applicant shall submit a baseline report summarizing the following:
  - (1) Conditions existing at the site prior to construction of the proposed project and compensatory mitigation.
  - (2) The construction process.
- (d) The department may request additional information from the applicant if it is determined to be necessary. (*Water Pollution Control Board; 327 IAC 17-4-17*)

**327 IAC 17-4-18 Review of mitigation plans for waters other than wetlands**  
**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2  
**Affected:** IC 13-18-3; IC 13-18-4

- Sec. 18. The department shall review a complete compensatory mitigation plan for waters other than wetlands and shall approve it only if the following conditions are met:**
- (1) The existing and designated uses lost by impacting waters other than wetlands will be adequately replaced by the compensatory mitigation.
  - (2) There is an overall probability of success taking into consideration the following factors:
    - (A) The methods to be used to recreate waters other than wetlands at a proposed compensatory mitigation site.
    - (B) The construction methods to be used to recreate or stabilize stream banks.
    - (C) The proximity of a proposed compensatory mitigation site to other waters or natural areas.
    - (D) The presence of exotic plant species on a proposed compensatory



mitigation site.

(E) The inclusion of a buffer zone around a proposed compensatory mitigation site.

(F) The methods proposed to control flow through a proposed compensatory mitigation site.

(G) The land use adjacent to a proposed compensatory mitigation site.

(H) The methods proposed to establish vegetation on a proposed compensatory mitigation site.

(I) The proposed plan for long term management of a proposed compensatory mitigation site.

(J) The uses to be replaced.

(K) The success criteria to be met.

*(Water Pollution Control Board; 327 IAC 17-4-18)*

**327 IAC 17-4-19 Documentation required for a compensatory mitigation monitoring plan for waters other than wetlands**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-14-1-13; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 19. (a)** A compensatory mitigation monitoring plan for waters other than wetlands must be approved by the department prior to the issuance of a water quality certification.

**(b)** A monitoring plan must, at a minimum, provide the following:

**(1)** Description of the compensatory mitigation success criteria.

**(2)** Goals that must be achieved to meet the success criteria.

**(3)** Methods for evaluating the success of compensatory mitigation.

**(4)** Map of sampling points.

**(5)** Monitoring schedule.

**(6)** Description of tests and sampling methods required to monitor the development and overall success of the mitigation.

*(Water Pollution Control Board; 327 IAC 17-4-19)*

**327 IAC 17-4-20 Documentation required for a monitoring report for waters other than wetlands**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-14-1-13; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**(a)** An applicant must submit monitoring reports for waters other than wetlands to the department as required by conditions specified in the water quality certification. A monitoring report must, at a minimum, provide the following:

**(1)** A survey of the grade, shape, and capacity of mitigation to verify that these criteria match the criteria in the mitigation plan approved by the department.

**(2)** Results, obtained using approved sampling protocols beginning at the time the mitigation construction is completed and water is released into the mitigation site,

including the results of any required annual fisheries sampling that shall be conducted:

- (A) in July of the year after the release of water into relocated channels; and
- (B) from points established through discussions between the applicant and the department.

(b) Reports submitted to the department must include the following:

- (1) Summary and raw data sheets.
- (2) A narrative overview of the results of the surveys.
- (3) A comparison of the results to the success criteria in section 15 of this rule.

(c) Results of testing and monitoring must be:

- (1) evaluated annually by the department to compare the project to the success criteria; and
- (2) used to determine if additional action or monitoring is warranted.

(d) The department may require the applicant to prepare an annual report, of habitat structures and features placed within the channel, to assess:

- (1) their condition or structural failure within the channels;
- (2) the accumulation of sediment or debris; and
- (3) other maintenance issues.

*(Water Pollution Control Board; 327 IAC 17-4-20)*

**327 IAC 17-4-21 Compensatory mitigation monitoring for waters other than wetlands**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-14-1-13; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec 21. (a)** A compensatory mitigation monitoring plan for waters other than wetlands must be approved by the department prior to the issuance of a water quality certification.

(b) A compensatory mitigation site shall be monitored until the department provides the applicant with a letter confirming that the success criteria stipulated in the water quality certification and in section 22 of this rule have been achieved for at least two (2) consecutive years.

(c) The applicant shall be responsible for monitoring factors necessary to determine when a compensatory mitigation site has achieved the success criteria required. These factors may include the following:

- (1) Vegetation sampling.
- (2) Fish surveys.
- (3) Macroinvertebrate surveys.
- (4) Water quality sampling.
- (5) Post-construction surveys of boundaries of the project site and site elevations.
- (6) An evaluation of whether habitat and in-stream structures are functioning as

designed.

(7) An assessment of the stability of stream banks and channel bottoms.

*(Water Pollution Control Board; 327 IAC 17-4-21)*

**327 IAC 17-4-22 Success criteria for a compensatory mitigation site for waters other than wetlands**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 22.** The department shall require a compensatory mitigation site for waters other than wetlands to meet the following minimum success criteria:

**(1) A reconstructed or relocated channel must:**

**(A) support a community of fish species equal to or greater in diversity than the original channel; and**

**(B) be comparable to the grade, hydraulic capacity, and basic channel geometry of the channel as specified in the water quality certification.**

**(2) A stream bank must:**

**(A) be stable; and**

**(B) require no additional structural improvements or corrections to maintain stream structure or bank stability.**

**(3) The existing and designated uses lost from an impacted water body must be replaced.**

**(4) The success criteria set forth in the approved compensatory mitigation plan must be met.**

*(Water Pollution Control Board; 327 IAC 17-4-22)*

**327 IAC 17-4-23 Compensatory mitigation remediation for waters other than wetlands**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Affected:** IC

**Sec. 23. (a)** An applicant shall submit a compensatory mitigation remediation plan for waters other than wetlands to the department for approval within sixty (60) days of one (1) of the following:

**(1) Evidence of the following at the compensatory mitigation site:**

**(A) A structural failure.**

**(B) Damage from storm events.**

**(C) A downward trend in fishery communities that is the result of a failed habitat structure within the compensatory mitigation channel.**

**(D) Die off among plants or other vegetation features.**

**(2) Indication, from at least two (2) consecutive years of monitoring, that the site is trending away from achievement of the success criteria required by section 22.**

**(b) A remediation plan must include the following:**

**(1) Identification of the problem or problems preventing the compensatory**

mitigation site from achieving the success criteria.

(2) A course of action, to eliminate the problem or problems, that may include one

(1) or more of the following:

(A) Addition of structures designed to enhance habitat or stabilize stream banks.

(B) Replanting the compensatory mitigation site.

(c) The applicant shall initiate implementation of the remediation plan within one

(1) calendar year of its approval by the department. (*Water Pollution Control Board; 327 IAC 17-4-23*)

#### **Rule 5. Issuance, Denial, Revocation, Modification, or Expiration of a Water Quality Certification**

**327 IAC 17-5-1 Departmental action regarding a water quality certification**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 1. (a)** The department shall issue one (1) of the following decisions concerning an application for a water quality certification after an assessment review completed according to the provisions of 327 IAC 17-1 through 327 IAC 17-4:

(1) The department may grant a water quality certification for impacts to a Tier I wetland or waters other than wetlands if:

(A) no other practicable alternative exists;

(B) the project complies with all applicable federal and state laws;

(C) impacts have been minimized in accordance with 327 IAC 17-3-4 (f); and

(D) the applicant provides compensatory mitigation in accordance with 327 IAC 17-4.

(2) The department may grant certification for a project involving an impact to a Tier II wetland if:

(A) no other practicable alternative exists;

(B) the project complies with all applicable federal and state laws;

(C) the department approves the applicant's antidegradation demonstration; and

(D) the applicant provides compensatory mitigation, that is completed and determined by the department to be successful in replacing all adversely impacted wetland existing and designated uses, before the wetland is impacted.

(3) The department may grant certification for a project involving an impact to an outstanding state resource water or outstanding national resource water if:

(A) no other practicable alternative exists;

(B) the project complies with all applicable federal and state laws;

(C) impacts have been minimized in accordance with 327 IAC 17-3-6; and

(D) the impact is short term and temporary, generally less than one (1) year

in duration.

- (4) The department shall deny certification if it is determined that:
- (A) the requirements of subdivisions (1), (2), or (3) are not met;
  - (B) significant degradation of water quality, including secondary and cumulative impacts, may result from the project;
  - (C) the proposed compensatory mitigation will not successfully replace the impacted existing and designated uses of the wetland;
  - (D) the project will cause significant degradation to water quality that cannot be offset with compensatory mitigation, even if alternatives are not available; or
  - (E) the applicant has failed to submit a complete application or has failed to provide additional information requested by the department.
- (5) The department shall waive a water quality certification if the department fails to make a final determination within one (1) year of its receipt of a complete application, unless the federal permitting agency chooses to accept a certification subsequent to the expiration of one (1) year.

(b) If the department grants a water quality certification, then the department shall include in the certification conditions and monitoring requirements the department deems necessary to ensure that the applicant complies with the applicable provisions of federal and state laws. (*Water Pollution Control Board; 327 IAC 17-5-1*)

### **327 IAC 17-5-2 Revocation or modification of a water quality certification**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-14-1-13; IC 13-18-3-1; IC 13-18-3-2

**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 2. (a)** The department may revoke a water quality certification if one (1) of the following occurs:

- (1) The applicant does not comply with one (1) or more conditions of the water quality certification.
- (2) The applicant has caused or is likely to cause a violation of a state water quality standard or other applicable statutory or regulatory requirement.
- (3) The applicant is in violation of one (1) of the following:
  - (A) Construction of compensatory mitigation measures according to the water quality certification.
  - (B) Construction of the project according to plans or specifications reviewed by the department.
- (4) The applicant has misrepresented or failed to disclose fully all relevant facts in the application or during the application process.
- (5) The applicant has failed to submit a monitoring report, post-construction report, or other document as required by 327 IAC 17-4.

(b) The department may modify a water quality certification if:

- (1) the department receives a request, from the applicant holding a valid water quality certification, to modify a project or its associated impacts; or

(2) the department determines that modification is necessary to ensure compliance with applicable provisions of federal or state law that have changed since issuance of the certification, including changes in:

- (A) construction or operation of the project;
- (B) characteristics of the receiving water;
- (C) the applicable water quality criteria; or
- (D) applicable effluent limitations or other requirements of state law.

(c) The department shall process an application for modification as if it were an original application. (*Water Pollution Control Board; 327 IAC 17-5-2*)

**327 IAC 17-5-3 Expiration of a water quality certification**

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-3; IC 13-18-4

**Sec. 3. (a)** A water quality certification granted or waived by the department shall expire two (2) years after its issuance date if work is not commenced within wetlands or other waters.

(b) A water quality certification granted by the department for a Corps general permit shall:

- (1) be effective for the duration of the Corps general permit; and
- (2) be modified or revoked if the department determines the Corps general permit is causing or contributing to significant impact to water quality.

(*Water Pollution Control Board; 327 IAC 17-5-3*)

**327 IAC 17-5-4 Emergency issuance of a water quality certification**

Authority: IC 4-21.5-4-1; IC 4-21.5-4-2; IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-3; IC 13-18-4

**Sec 4. The commissioner:**

(1) may issue an emergency water quality certification if:

- (A) an unacceptable and immediate threat to human life, water quality, or waters of the state, including wetlands, may occur; or
- (B) a severe loss of property may result;

before a water quality certification could be issued in accordance with normal procedures according to this article;

(2) shall issue a public notice, no later than ten (10) days after the issuance of an emergency water quality certification, that:

- (A) states the reasons for the emergency issuance; and
- (B) complies with the requirements of 327 IAC 17-2-2; and

(3) shall incorporate, into an emergency water quality certification, all standards and criteria that would normally be applied to a project not being reviewed under

**the emergency provision of this section.**  
*(Water Pollution Control Board; 327 IAC 17-5-4)*

## **Rule 6. Notice and Appeal of Final Decision**

### **327 IAC 17-6-1 Notice of final decision**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2  
**Affected:** IC 4-21.5

**Sec. 1. (a)** The department shall serve notice of its final decision by certified mail on the applicant and the following persons:

- (1)** Those who submitted comments during the comment period.
- (2)** Those who requested notice of the final decision.

**(b)** A final decision regarding a water quality certification issued by the department may be appealed in accordance with IC 4-21.5. A notice of final decision must include reference to the procedures available to appeal a final decision by requesting an adjudicatory hearing.

**(c)** A final decision becomes effective fifteen (15) days after service of the mailing is made, unless a petition for review and a petition for stay are filed, according to IC 4-21.5-3-5, with the Office of Environmental Adjudication within that fifteen (15) day period.  
*(Water Pollution Control Board; 327 IAC 17-6-1)*

## **Rule 7. Conditions Applicable to a Water Quality Certification**

### **27 IAC 17-7-1 Responsibilities**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2  
**Affected:** IC 13-18-3; IC 13-18-4

**Sec. 1. (a)** An applicant must comply with the conditions of the water quality certification issued in response to the application.

**(b)** Issuance of a water quality certification does not:

- (1)** relieve the applicant of its duty to comply with federal and state laws or obtain other permits or authorizations required to conduct the project;
- (2)** authorize injury to persons or private property or invasion of other private rights;
- (3)** authorize impacts or activities not detailed in the application; nor
- (4)** convey property rights or exclusive privileges.

*(Water Pollution Control Board; 327 IAC 17-7-1)*

### **327 IAC 17-7-2 Right of entry**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-14-2-2; IC 13-18-3-1; IC 13-18-3-2;  
**IC** 13-18-3-9

**Affected: IC 13-18-3; IC 13-18-4**

**Sec. 2. (a) The department or its authorized representative, upon presentation of proper credentials, shall have the following rights:**

- (1) A right of entry to, upon, or through any premises, public or private, that are:**
  - (A) the subject of the application, including property that is proposed as compensatory mitigation;**
  - (B) where records, reports, monitoring or treatment equipment or methods, samples, or other data, required to be provided or maintained, are located; and**
  - (C) the subject of a possible violation.**
- (2) Access to and right to copy any record that is required to be kept or submitted under the terms of the certification.**
- (3) Access to inspect monitoring, treatment, or operational equipment or facility.**
- (4) Access to take samples.**

**(b) The department may authorize an employee of the department or other person under contract with the department to act as its representative. (*Water Pollution Control Board; 327 IAC 17-7-2*)**

### **327 IAC 17-7-3 Compliance**

**Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-9**

**Affected: IC 13-30**

**Sec. 3. (a) The department may conduct an inspection to determine compliance with a water quality certification or applicable provisions of federal and state laws.**

**(b) If the department determines that a person is violating or is about to violate a provision of 327 IAC 2 or a condition of a water quality certification, the department shall serve notice on the person, by certified mail, of the department's determination. The notice shall include an order against the person to immediately cease the violation and complete one (1) of the following actions:**

- (1) Rectify the violation by restoring the water body to its pre-violation condition.**
- (2) Submit an application to the department for a water quality certification for the unauthorized activity.**

**(*Water Pollution Control Board; 327 IAC 17-7-3*)**

### **327 IAC 17-7-4 Enforcement**

**Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-1-12; IC 13-18-3-1; IC 13-18-3-2**

**Affected: IC 13-30**

**Sec. 4. A violation of this article, in part or in whole, may subject a person, causing or contributing to the violation, to administrative or judicial proceedings pursuant to IC 13-30. (*Water Pollution Control Board; 327 IAC 17-7-4*)**



***Notice of First Meeting/Hearing***

*Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on April 12, 2000, at 1:30 p.m. at the Indiana Government Center-South, 402 West Washington Street, Training Center Room 8, Indianapolis, Indiana the Water Pollution Control Board will hold a public hearing on new rules concerning procedures and criteria for reviewing federally permitted or licensed activities that require a water quality certification under Section 401 of the federal Clean Water Act.*

*The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rule. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).*

*Additional information regarding this action may be obtained from MaryAnn Stevens, Rules Section, Office of Water Management, (317) 232-8635 or (800) 451-6027 (in Indiana).*

*Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:*

*Attn: Sandy Meanor, ADA Coordinator  
Indiana Department of Environmental Management  
100 North Senate Avenue  
P.O. Box 6015  
Indianapolis, Indiana 46206-6015*

*or call (317) 233-1785 (V) or (317) 233-6565 (TDD). Please provide a minimum of 72 hours' notification.*

*Copies of these rules are now on file at the Office of Water Management, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Twelfth Floor, Indianapolis, Indiana and are open for public inspection.*

Matthew C. Rueff  
Assistant Commissioner  
Office of Water Management  
Indiana Department of Environmental Management